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Filing date: **10/31/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176744
Party	Plaintiff DC Comics and Marvel Characters, Inc.
Correspondence Address	Jonathan D. Reichman Kenyon & Kenyon, LLP One Broadway New York, NY 10004 UNITED STATES mmorris@kenyon.com, jreichman@kenyon.com, mmarsh@kenyon.com, plum@kenyon.com, rcollins@kenyon.com
Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Michelle C. Morris/
Date	10/31/2008
Attachments	SUPER HERO_Opposer's Motion to Amend Opp 10-31-2008.pdf ( 137 pages ) (11010014 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DC COMICS and  
MARVEL CHARACTERS, INC.,

Opposers,

v.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744  
Application No. 78/823,155  
Mark: SUPER HERO

**OPPOSER'S MOTION FOR LEAVE TO AMEND ITS NOTICE OF OPPOSITION**

Pursuant to Trademark Board Manual of Procedure § 507, 37 CFR § 2.107, and Federal Rule of Civil Procedure 15(a), Opposers DC Comics and Marvel Characters, Inc. (collectively, "Opposer") seek an order from the Trademark Trial and Appeal Board ("the Board") granting Opposer leave to amend its Notice of Opposition to assert as an additional ground to its Opposition: that Applicant Michael Craig Silver ("Applicant") lacked a *bona fide* intention to use the mark in commerce on the specified goods at the time he filed Applicant Serial No. 78/823,155 (the "Application").

Opposer recently received Applicant's long overdue discovery responses, which reveal that at the time Applicant filed the Application, he lacked a *bona fide* intent to use the mark in commerce in connection with the goods referenced in the Application. In accordance, Opposer seeks leave to amend its Notice of Opposition to include this additional ground for relief.

In support of its motion, Opposer annexes the Declaration of Jonathan D. Reichman (the “Reichman Dec.”) and the exhibits attached thereto, which include Opposer’s proposed Amended Notice of Opposition as **Exhibit A**.<sup>1</sup>

### **BACKGROUND**

Opposer initiated this proceeding by filing a Notice of Opposition on April 9, 2007 against Applicant’s intent-to-use Application to register the mark SUPER HERO in International Class 03 for “After sun creams; Beauty creams for body care; Cosmetic products in the form of aerosols for skincare; Non-medicated sun care preparations; Skin moisturizer; Skin toners; Sun block; Sun care lotions; Sun screen; Sun tan oil; Sun-block lotions.”

On May 5, 2008, Opposer timely served upon Applicant written discovery requests, consisting of Opposer’s First Request for Production of Documents to Applicant (“Opposer’s Document Requests”), Opposer’s First Set of Interrogatories to Applicant (“Opposer’s Interrogatories”), and Opposer’s First Set of Requests for Admission to Applicant (collectively, “Opposer’s Discovery Requests,” which are attached to the Reichman Dec. as **Exhibits B, C and D**, respectively).

On June 6, 2008, Applicant served his first set of written responses to Opposer’s Discovery Requests (Applicant’s Response to Opposer’s First Set of Interrogatories, Applicant’s Response to Opposer’s First Set of Document Requests, and Applicant’s Response to Opposer’s First Set of Requests for Admission, which are attached to the Reichman Dec. as **Exhibits E, F and G**, respectively).

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<sup>1</sup> Opposer notes that its additional ground for opposition is reflected in paragraph 21 of its proposed Amended Notice of Opposition.

Applicant's responses were wholly deficient in that Applicant failed to provide even a single document or shred of information. Instead, Applicant improperly objected to each document request and interrogatory on the ground of "Work Product Privilege," notwithstanding the fact that Applicant is (on information and belief) neither an attorney nor represented by counsel.

Applicant never propounded any discovery requests upon Opposer.

On July 3, 2008, after weeks of numerous unsuccessful attempts to obtain Applicant's cooperation in discovery, Opposer was forced to file a Motion to Compel Discovery.

On September 4, 2008, Opposer's Motion to Compel Discovery was granted in full by the Board (the "September 4 Order"), and Applicant was ordered to serve adequate written responses and documents within thirty days. Applicant was further ordered to "... notify opposers that the selection, designation and identification of such documents has been completed."

On October 2, 2008 and October 3, 2008, Applicant served his supplemental responses and responsive documents (Applicant's Amended/Supplemental Responses to Interrogatory Nos. 1-27, Applicant's Amended/Supplemental Responses to Opposer's Document Request Nos. 1-14 and 35, and Applicant's document production, which are attached to the Reichman Dec. as **Exhibits H, I and J**, respectively). However, Applicant failed to notify Opposer that the selection, designation and identification of documents was completed.

Although Opposer requested documents relating to Applicant's intended use of the mark, Applicant produced no responsive documents other than an email from the USPTO confirming his trademark Application for the mark, and some handwritten notes regarding settlement of the matter and TTAB procedures and rules.

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On October 10, 2008, Opposer filed a motion for an extension of the testimony periods based upon Applicant's delay in supplying his discovery responses; upon Applicant's failure to confirm that such responses were complete, in violation of the September 4 Order; and upon Opposer's need for additional time to evaluate Applicant's responses and prepare for and take testimony.

On October 22, 2008, the Board held a telephonic hearing on Opposer's motion, and issued an Order granting a brief extension of testimony dates, basing its decision partially on the fact that "notwithstanding the September 4, 2008 order, Applicant waited until the telephone conference to state that his document production was complete."

Now, upon confirmation that Applicant's production is complete, and upon full review of Applicant's discovery responses, it is clear that Applicant has produced no correspondence, no business plans, no documents evidencing investigation of the marketplace, no specific information concerning potential retailers or intended channels of trade, and no information regarding his intended types of customers. Applicant has no prototypes and no details on how he intends to manufacture the goods. According to Applicant, no documents exist and no specific responsive information exists with regard to the aforementioned categories. Thus, based on Applicant's discovery responses, Opposer believes that it now has an additional valid basis for opposition, in that Applicant lacked a *bona fide* intention to use Applicant's Mark as of the date that he filed the Application.

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## ARGUMENT

### **OPPOSER SHOULD BE GRANTED LEAVE TO AMEND ITS NOTICE OF OPPOSITION**

#### **Opposer Has an Additional Valid Basis for Opposition**

The Board has consistently recognized that “amendment to pleadings should be allowed with great liberality at any stage of the proceeding where necessary to bring about a furtherance of justice unless it is shown that entry of the amendment would violate settled law or be prejudicial to the rights of any opposing parties.” Commodore Elecs. Ltd. v. CBM Kabushki Kaisha, 26 U.S.P.Q.2d 1503, 1505 (T.T.A.B. 1993) (quoting American Optical Corp. v. American Olean Tile Co., Inc. 168 U.S.P.Q. 471, 473 (T.T.A.B. 1971)).

Furthermore, “if the underlying facts or circumstances relied upon by [a claimant] may be a proper subject of relief, [it] ought to be afforded an opportunity to test his claims on the merits.” Foman v. Davis, 331 U.S. 178, 182 (1962). It is not necessary for Opposer to prove its case on the motion to amend, but instead, Opposer need only satisfy the liberal pleading standards of Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Here, the law plainly recognizes that “the absence of any documentary evidence on the part of the applicant regarding [its intent to use the mark at the time of filing] is sufficient to prove that the applicant lacks a bona fide intention to use its mark in commerce as required by Section 1(b)” of the Trademark Act, 15 U.S.C. 1051(b). Commodore Elecs. Ltd., 26 U.S.P.Q. at 1507. See also Boston Red Sox Baseball Club Ltd. P'ship v. Sherman, 2008 WL 4149008, (Trademark Tr. & App. Bd.), September 09, 2008, Opposition No. 91172268 (applicant’s lack of *bona fide* intent to use the mark SEX ROD in commerce was established by applicant’s failure to provide, in response to opposer’s discovery requests, any documents establishing any plan as to how he would proceed with such a business).

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This case is nearly identical to the facts set forth in Commodore Elects. Ltd., wherein the opposer sought leave to amend its opposition after it learned through discovery that the applicant “did not have a single document to establish a bona fide intention to use [its mark] in commerce.” 26 U.S.P.Q.2d at 1504. In that case, the Board held that the opposer set forth a valid claim which was capable of surviving scrutiny under FRCP 12(b)(6). Id. at 1506-07. The Board found that absent a compelling justification by the applicant for the lack of documentation, the opposer would succeed on its claim.

In the instant case, Applicant failed to produce any information or documents which are capable of establishing a *bona fide* intent to use the mark in commerce. The documents provided by Applicant consist only of (1) an email from the USPTO confirming Applicant’s Trademark Application; and (2) handwritten notes which refer to settlement negotiations with Opposer and TTAB procedures and rules. (See **Exhibit J** to Reichman Dec.).

In particular, Opposer’s Document Request No. 4 sought “Documents sufficient to show Applicant’s use or intended use of SUPER HERO in connection with any products or services sold. . . or intended to be sold. . . by Applicant.” (See **Exhibit B** to Reichman Dec.) In response, Applicant directed Opposer to “Figure 1 detailing USPTO email confirmation of SUPER HERO mark application receipt.” (See **Exhibit I** to Reichman Dec.) This single document, an email from the USPTO, is simply insufficient to establish Applicant’s *bona fide* intent to use the mark in commerce.

In addition, although Opposer requested documents relating to Applicant’s intended advertising, marketing plans, customer information, intended channels of trade, *etc.*, Applicant repeatedly stated that he possesses “no documents” or “no documents exist.” Applicant has

admitted that he has not yet used the mark in commerce, and it appears that he has given absolutely no thought as to how the mark will be used in commerce.

Applicant's interrogatory responses further support Applicant's lack of a *bona fide* intention to use the mark in commerce. For example, in response to Opposer's Interrogatory No. 27, which sought information regarding any steps taken by Applicant toward manufacturing, distributing, selling and/or promoting any products or services under the SUPER HERO trademark (see **Exhibit C** to Reichman Dec.), Applicant simply responded "Applicant has not taken any steps towards manufacturing, distributing, selling and or promoting any products or services under the SUPER HERO trademark." (See **Exhibit H** to Reichman Dec.).

Moreover, the remainder of Applicant's interrogatory responses reveals that he has not given any thought to the retail or wholesale prices of his intended products; does not intend to conduct any advertising; and has no specific target market for the products. (See **Exhibit H** to Reichman Dec.). Thus, based on Applicant's discovery responses, Opposer firmly believes that Applicant lacked a *bona fide* intent to use his mark as of the date he filed his Application asserting same, and therefore Opposer seeks to state this additional valid basis for opposition.

#### **Applicant will not be Prejudiced by the Amendment**

There is no prejudice which will result from Opposer's amendment to its Notice of Opposition. Opposer has acted diligently in seeking such amendment upon confirmation that Applicant's discovery responses were complete, and upon analysis of these responses in conjunction therewith. It was only about one week ago that Applicant finally provided such confirmation. As such, Opposer should be permitted to file its Amended Notice of Opposition.




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**CONCLUSION**

For the reasons hereinabove set forth, Opposer respectfully requests that the Board issue an order granting Opposer's motion for leave to amend its Notice of Opposition, as set forth in **Exhibit A** to the annexed Reichman Dec.

KENYON & KENYON LLP

Dated: October 31, 2008

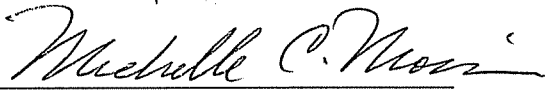
By:   
Jonathan D. Reichman  
Michelle Mancino Marsh  
Michelle C. Morris  
One Broadway  
New York, New York 10004  
(212) 425-7200  
*Attorneys for Opposer*

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**PROOF OF SERVICE**

I hereby certify that true and complete copy of OPPOSER'S MOTION TO LEAVE TO AMEND ITS NOTICE OF OPPOSITION, the Declaration of Jonathan D. Reichman and accompanying exhibits, including, OPPOSER'S AMENDED NOTICE OF OPPOSITION, have been served by mailing said copy on October 31, 2008, via first class mail, to:

Michael Craig Silver  
3229 Steiner Street  
San Francisco, California 94123

  
\_\_\_\_\_  
Michelle C. Morris

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DC COMICS and  
MARVEL CHARACTERS, INC.,

Opposers,

v.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744  
Application No. 78/823,155  
Mark: SUPER HERO

**DECLARATION OF JONATHAN D. REICHMAN IN SUPPORT OF OPPOSER'S  
MOTION FOR LEAVE TO AMEND ITS NOTICE OF OPPOSITION**

I, Jonathan D. Reichman, hereby declare:

1. I am a partner at the law firm of Kenyon & Kenyon LLP, counsel for Opposers DC Comics and Marvel Characters, Inc. (collectively, "Opposer") in the above-referenced matter.
2. I make this statement in support of Opposer's Motion for Leave to Amend its Notice of Opposition pursuant to Trademark Board Manual of Procedure § 507, 37 CFR § 2.107, and Federal Rule of Civil Procedure 15(a). A signed copy of the proposed Amended Notice of Opposition is attached hereto as **Exhibit A**.
3. On May 5, 2008, Opposer timely served upon Applicant written discovery requests, consisting of Opposer's First Request for Production of Documents to Applicant, Opposer's First Set of Interrogatories to Applicant, and Opposer's First Set of Requests for Admission to

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Applicant. True and correct copies of these documents are attached hereto as **Exhibits B, C and D**, respectively.

4. On or about June 6, 2008, Opposer received Applicant's Response to Opposer's First Set of Interrogatories, Applicant's Response to Opposer's First Set of Document Requests, and Applicant's Response to Opposer's First Set of Requests for Admission. True and correct copies of these documents are attached hereto as **Exhibits E, F and G**, respectively.

5. In his response, Applicant failed to provide a single document or shred of information, and instead Applicant improperly objected to each document request and interrogatory on the ground of "Work Product Privilege."

6. After numerous unsuccessful attempts to obtain Applicant's cooperation in the discovery process, Opposer filed a Motion to Compel Discovery on July 3, 2008.

7. On September 4, 2008, Opposer's Motion to Compel Discovery was granted in full by the Board (the "September 4 Order"). The September 4 Order required Applicant to respond in full to Opposer's discovery requests and notify Opposer that the "selection, designation and identification of documents was completed."

8. On or about October 2, 2008 and October 3, 2008, Opposer received Applicant's documents and supplemental written responses to Opposer's discovery requests. True and correct copies of Applicant's Amended/Supplemental Responses to Interrogatory Nos. 1-27, Applicant's Amended/Supplemental Responses to Opposer's Document Request Nos. 1-14 and 35, and Applicant's document production are attached hereto as **Exhibits H, I and J**, respectively.

However, Applicant failed to notify Opposer that the selection, designation and identification of

documents was completed, as required by the Board's September 4 Order. Opposer followed up with Applicant and requested this confirmation, but Applicant did not respond.

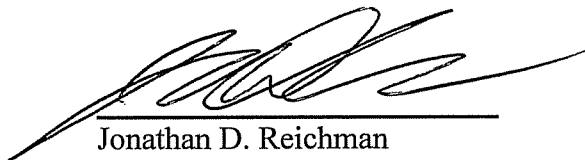
9. Finally, during an October 22, 2008 telephonic hearing before the Board on Opposer's Motion to Extend Testimony Periods, Applicant finally confirmed to Opposer that his document production was complete.

10. Based on a review of what Opposer now understands to be Applicant's complete discovery responses, it is abundantly clear that Opposer has a valid basis for an additional opposition ground, namely, Applicant's lack of a *bona fide* intent to use his mark in commerce on the goods set forth in his Application, as of the filing date of this application.

11. Upon determining this additional ground for relief, Opposer has acted diligently in seeking to amend its Notice of Opposition.

I declare that the foregoing is true and accurate to the best of my knowledge under penalty of perjury of the laws of the United States.

Dated: October 31, 2008



Jonathan D. Reichman

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# EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DC COMICS and  
MARVEL CHARACTERS, INC.,

Opposers,

v.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744  
Application No. 78/823,155  
Mark: SUPER HERO

**OPPOSER'S AMENDED NOTICE OF OPPOSITION**

DC Comics, a New York general partnership, having a place of business at 1700 Broadway, New York, New York 10019, and Marvel Characters, Inc. ("Marvel"), a Delaware corporation, having a place of business at 9242 Beverly Boulevard, Suite 350, Beverly Hills, California 90210 (sometimes collectively, "Opposer"), believe that they will be damaged by registration of the above-identified mark, and hereby oppose the registration of said mark. The grounds of opposition are as follows:

1. By the application herein opposed, Applicant Michael Craig Silver is seeking to obtain, under the provisions of the Trademark Act of 1946 (15 U.S.C. § 1051 *et seq.*), registration for the mark "SUPER HERO" for "after sun creams; beauty creams for body care; cosmetic products in the form of aerosols for skincare; non-medicated sun care preparations; skin moisturizer; skin toners; sun block; sun care lotions; sun screen; sun tan oil; sun block lotions" in International Class 3. Applicant filed its application on February 24, 2006.
2. Applicant filed its application under 15 U.S.C. § 1051(b), and, on information and belief, has not yet commenced commercial use of the subject mark.

3. Opposer is engaged in the businesses of, *inter alia*, publishing, merchandise licensing, media, and entertainment. DC Comics is the owner and publisher of “DC Comics” and related intellectual property, which feature such world-famous characters and properties as “SUPERMAN®” and “BATMAN®.” Marvel (including its related companies) is the owner and publisher of “Marvel Comics” and related intellectual property, which feature such world-famous characters and properties as “SPIDER-MAN®” and “THE HULK®.”

4. Opposers are the joint owners of the trademarks and service marks “SUPER HERO,®” “SUPER HEROES,®” and variations thereof. Beginning at least as early as 1958, *i.e.*, well prior to Applicant’s filing date, Opposer (including its predecessors-in-interest) has used “SUPER HERO,®” “SUPER HEROES,®” and variations thereof as trademarks and services marks for a wide variety of products and services, including, without limitation, comic books, clothing, foods, toys, motion picture films, and television programming.

5. Opposer is the owner of numerous registrations on the Principal Register of the United States Patent and Trademark Office for its “SUPER HERO®” and “SUPER HEROES®” marks, including the following:

Mark	Reg. No.	Date of Reg.	Goods
SUPER HERO	825,835	3/14/67	Masquerade costumes
SUPER HEROES	1,140,452	10/14/80	Toy figures



SUPER HEROES	1,179,067	11/24/81	Publications, particularly comic books and magazines and stories in illustrated form, notebooks and stamp albums
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True and correct copies of these registrations are attached hereto Exhibit "A." All of these registrations issued prior to Applicant's application date and consequently there is no question of priority of rights, such priority clearly belonging to Opposer. Moreover, all of these registrations are incontestable under 15 U.S.C. § 1065.

6. Through Opposer's exploitation activities, and through the extensive promotional and advertising activities of Opposer and its licensees connected therewith, the public and trade have come to associate the trademarks and service marks "SUPER HERO," "SUPER HEROES," and variations thereof with Opposer and with its products and services.

7. By virtue of its prior use in commerce of "SUPER HERO," "SUPER HEROES," and variations thereof, Opposer is entitled to hold itself out to the public and trade as having the exclusive right to use "SUPER HERO," "SUPER HEROES," and variations thereof as trademarks and service marks. Registration of Applicant's mark would be inconsistent with that right of Opposer.

8. Substantial efforts have been devoted by Opposer and its licensees to advertise and promote its goods and services under Opposer's "SUPER HERO" and "SUPER HEROES" trademarks and service marks. Opposer, by its aforesaid use of "SUPER HERO", "SUPER HEROES" and variations thereof, and by its promotional efforts in connection therewith, has built up valuable goodwill associated with these marks. As a result of the long

use, advertising and promotion by Opposer, said marks have acquired secondary meaning in the minds of both the trade and public in connection with Opposer and with its products and services. Moreover, Opposer's "SUPER HERO<sup>®</sup>" and "SUPER HEROES<sup>®</sup>" trademarks constitute famous marks under 15 U.S.C. § 1125(c)(1).

9. Moreover, Opposer has exploited various of its trademarks in connection with cosmetic and toiletry products in International Class 3. Hence, such product category represents a "natural zone of expansion" for Opposer's "SUPER HERO<sup>®</sup>" and "SUPER HEROES<sup>®</sup>" trademarks. Opposer's marks in Class 3 include the following:

Mark	Reg./(Appl.) No.	Reg./(Filing) Date	Goods
MY FIRST SUPER HERO	(78/946,654)	(8/7/06)	Cosmetics, namely lipstick, lip gloss and non-medicated lip balm; mascara; nail enamel; face powder, face cream, skin lotion and skin gel; body powder; bath oil, bath gel and non-medicated bath salts; hand cream and lotion; body cream and lotion; sunscreen preparation, namely cream and lotion; shaving cream and after-shave lotion, skin cleanser and non-medicated body soaks; body deodorant, cologne and perfume; soaps, namely, liquid bath soap, gel soap and bar soap; detergent soap, namely, liquid and powder; fabric softener; deodorant soap, skin soap; and shampoo and shampoo conditioner
KRYPTONITE	2,936,470	3/29/05	Cosmetics, namely lipstick, lip gloss and non-medicated lip balm; mascara; nail enamel; face powder, face cream, skin lotion and skin gel; bath powder and perfumed body powder; bath oil, bath gel and non-medicated bath salts; baby oil, baby powder, baby gel and baby lotion; hand cream and lotion; body cream and lotion; sunscreen preparation, namely cream and lotion; shaving cream and after-shave lotion, skin cleanser and non-medicated body soaks; body deodorant, cologne and perfume; soaps namely liquid bath soap, gel soap and bar soap; detergent soap, namely, liquid and powder; fabric softener; deodorant soap, skin soap; shampoo and shampoo conditioner; and

Mark	Reg./(Appl.) No.	Reg./(Filing) Date	Goods
			hairstyling gel
X-MEN	(77/046,945)	(11/17/06)	Cologne, eau-de-toilette; fragrances for personal use; perfume
STORM	(78/061,369)	(5/1/01)	Cosmetics, namely lipstick, eye shadow, lip gloss, rouge, eye makeup, nail polish, artificial fingernails; body lotion, hand lotion, after-shave lotion, face cream, cold cream, body cream, shaving cream, skin soap, hand soap, deodorant soap, liquid soap for hands, face and body, bubble bath, perfume, cologne; hair care products, namely, shampoo, hair gel, hair spray, hair conditioner, hair dye

A true and correct copy of Registration No. 2,936,470 is attached hereto as Exhibit "B."

10. In addition to the foregoing, DC Comics exploits its "BATMAN" trademark in connection with toothpaste, toothbrushes, bubble bath, body wash, shower gel, soap, "bath fizzies," bath holders, soap molders, play razors, play shaving brushes, play after-shave cologne, and soap crayons. DC Comics further exploits its "SUPERMAN" trademark in connection with bubble bath, soap, toothbrushes, bath paint, bath crayons and bath sponges.

11. Representative samples of products marketed by Opposer in International Class 3 are attached hereto as Exhibit "C."

12. Moreover, the Examining Attorney has cited Applicant's Application No. 78/823,155 against DC Comics' application for "MY FIRST SUPER HERO," and has suspended the "MY FIRST SUPER HERO" application on this basis. Hence, Applicant's mark is posing a direct obstacle to Opposer's protection and exploitation of its legitimate prior rights in its "SUPER HERO®" and "SUPER HEROES®" trademarks.

13. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least the *prima facie* exclusive right to use such mark. Such registration would be a source of damage and injury to Opposer.

14. Applicant's mark for which it seeks registration is identical and/or confusingly similar to Opposer's "SUPER HERO®" and "SUPER HEROES®" trademarks and service marks. Applicant's proposed use and registration of its mark is likely to cause injury to Opposer's rights in its "SUPER HERO®" and "SUPER HEROES®" marks, and such use and registration will inevitably cause confusion and mistake and will deceive the public into believing that the goods of Applicant are affiliated with, sponsored by, or jointly developed with Opposer or Opposer's licensees, and that such goods emanate from the same source, and/or that Applicant is in some other fashion connected with Opposer, all to Opposer's injury.

15. If Applicant is permitted to register its mark so as to claim exclusive rights therein, confusion among the public and trade will result, causing damage and injury to Opposer. Members of the trade and public familiar with Opposer's "SUPER HERO®" and "SUPER HEROES®" trademarks and service marks would be likely to believe (and would be justified in so believing) that Applicant's goods originated from Opposer, or an entity in some way associated with Opposer, or are licensed or authorized by Opposer or with Opposer's approval. Furthermore, any objection or fault found with Applicant's goods would necessarily reflect upon and seriously injure the reputation which Opposer has established in connection with the goods and services sold by Opposer and its licensees under its "SUPER HERO®" and "SUPER HEROES®" marks.

16. Moreover, Applicant's "SUPER HERO" mark, if used under the application herein opposed, would dilute the distinctive quality of Opposer's famous "SUPER HERO®" and "SUPER HEROES®" trademarks, thereby causing further damage to Opposer.

17. Additionally, as noted supra, Applicant's "SUPER HERO" application is blocking the registration of DC Comics' "MY FIRST SUPER HERO" application in International Class 3, notwithstanding Opposer's priority of rights in "SUPER HERO®" and "SUPER HEROES®". Such obstacle represents a further source of damage and injury to Opposer.

18. Consequently, Applicant's alleged mark does not and cannot exclusively identify the goods in connection with which it is proposed to be used as the goods of Applicant, nor can it distinguish those goods from the goods or services of Opposer, nor can it serve as an indication of source or origin of such goods.

19. By reason of the foregoing, Applicant's registration of the mark herein opposed will cause damage and injury to Opposer, and to Opposer's rights in its "SUPER HERO®" and "SUPER HEROES®" marks, and to the use thereof as described herein.

20. For the above reasons, Applicant's mark should be denied registration under 15 U.S.C. § 1052(d).

21. In addition, Applicant's registration should be denied because, based on information and belief, Applicant lacked a *bona fide* intent to use the "SUPER HERO" mark in commerce at the time that he filed his application, as established by the fact that he has no documents or information evidencing his alleged intent to use the mark at the time of the filing, or to date.

WHEREFORE, Opposer prays that Application Serial No. 78/823,155 be rejected, and that the registration of the mark therein sought for the goods therein specified be denied and refused, and that this Opposition be sustained.

KENYON & KENYON LLP

Dated: October 31, 2008

By: 

Jonathan D. Reichman  
Michelle Mancino Marsh  
Michelle C. Morris  
One Broadway  
New York, New York 10004  
(212) 425-7200  
*Attorneys for Opposer*



6



Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office

Renewal

Reg. No. 825,835

Registered Mar. 14, 1967

OG Date Oct. 4, 1988

**TRADEMARK  
PRINCIPAL REGISTER**

**SUPER HERO**

MARVEL ENTERTAINMENT GROUP,  
INC. (DELAWARE CORPORATION)  
387 PARK AVENUE SOUTH  
NEW YORK, NY 10016 AND

DC COMICS, INC. (NEW YORK CORPO-  
RATION)  
666 FIFTH AVENUE  
NEW YORK, NY 10103, ASSIGNEE BY  
MESNE ASSIGNMENT BEN COOPER,  
INC. (NEW YORK CORPORATION)  
BROOKLYN, NY

FOR: MASQUERADE COSTUMES, IN  
CLASS 39 (INT. CL. 25).

FIRST USE 10-29-1965; IN COMMERCE  
3-4-1966.

SER. NO. 243,225, FILED 4-12-1966.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Oct. 4, 1988.*

COMMISSIONER OF PATENTS AND TRADEMARKS



**Int. Cl.: 28**

**Prior U.S. Cl.: 22**

**United States Patent and Trademark Office**

**Reg. No. 1,140,452**

**Registered Oct. 14, 1980**

**TRADEMARK**  
**Principal Register**

**SUPER HEROES**

Cadence Industries Corporation (Delaware  
corporation)  
575 Madison Ave.  
New York, N.Y. 10022  
and  
DC Comics Inc. (New York corporation)  
75 Rockefeller Plz.  
New York, N.Y. 10019, assignees of  
Ben Cooper, Inc. (New York corporation)  
Brooklyn, N.Y.

For: TOY FIGURES, in CLASS 28 (U.S. Cl. 22).  
First use Jul. 2, 1973; in commerce Jul. 2, 1973.  
Owner of U.S. Reg. No. 1,080,655.

Ser. No. 11,796, filed Jan. 24, 1974.

M. MERCHANT, Primary Examiner

**Int. Cl.: 16**

**Prior U.S. Cls.: 5, 22, 37 and 38**

**United States Patent and Trademark Office**

**Reg. No. 1,179,067**

**Registered Nov. 24, 1981**

**TRADEMARK**  
**Principal Register**

**SUPER HEROES**

Cadence Industries Corporation (Del. corporation),  
a.k.a. Marvel Comics Group and DC Comics Inc.  
575 Madison Ave.  
New York, N.Y. 10022

For: PUBLICATIONS, PARTICULARLY  
COMIC BOOKS AND MAGAZINES AND  
STORIES IN ILLUSTRATED FORM; CARD-  
BOARD STAND-UP FIGURES; PLAYING  
CARDS; PAPER IRON-ON TRANSFERS; ERAS-  
ERS; PENCIL SHARPENERS; PENCILS; GLUE  
FOR OFFICE AND HOME USE, SUCH AS IS  
SOLD AS STATIONERY SUPPLY; NOTEBOOKS  
AND STAMP ALBUMS, in CLASS 16 (U.S. Cls. 5,  
22, 37 and 38).

First use Oct. 1966; in commerce Oct. 1966.

Ser. No. 222,079, filed Jul. 3, 1979.

HENRY S. ZAK, Primary Examiner



Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,936,470

Registered Mar. 29, 2005

TRADEMARK  
PRINCIPAL REGISTER

KRYPTONITE

DC COMICS (PARTNERSHIP)  
1700 BROADWAY  
NEW YORK, NY 10019

FOR: COSMETICS, NAMELY LIPSTICK, LIP GLOSS AND NON-MEDICATED LIP BALM; MASCARA; NAIL ENAMEL; FACE POWDER, FACE CREAM, SKIN LOTION AND SKIN GEL; BATH POWDER AND PERFUMED BODY POWDER; BATH OIL, BATH GEL AND NON-MEDICATED BATH SALTS; BABY OIL, BABY POWDER, BABY GEL AND BABY LOTION; HAND CREAM AND LOTION; BODY CREAM AND LOTION; SUNSCREEN PREPARATION, NAMELY CREAM AND LOTION; SHAVING CREAM AND AFTER-SHAVE LOTION, SKIN CLEANSER AND NON-MEDICATED BODY SOAKS; BODY DEODORANT, COLOGNE AND PERFUME; SOAPS, NAMELY,

LIQUID BATH SOAP, GEL SOAP AND BAR SOAP; DETERGENT SOAP, NAMELY, LIQUID AND POWDER; FABRIC SOFTENER; DEODORANT SOAP, SKIN SOAP; SHAMPOO AND SHAMPOO CONDITIONER; AND HAIRSTYLING GEL, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 11-23-2001; IN COMMERCE 11-23-2001.

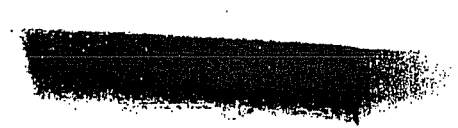
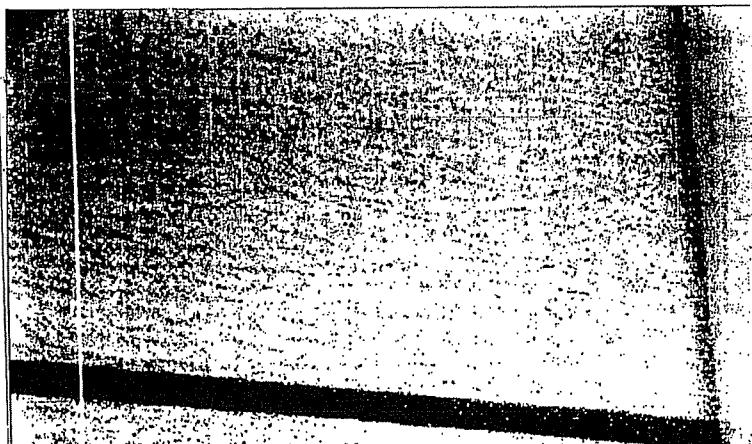
THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

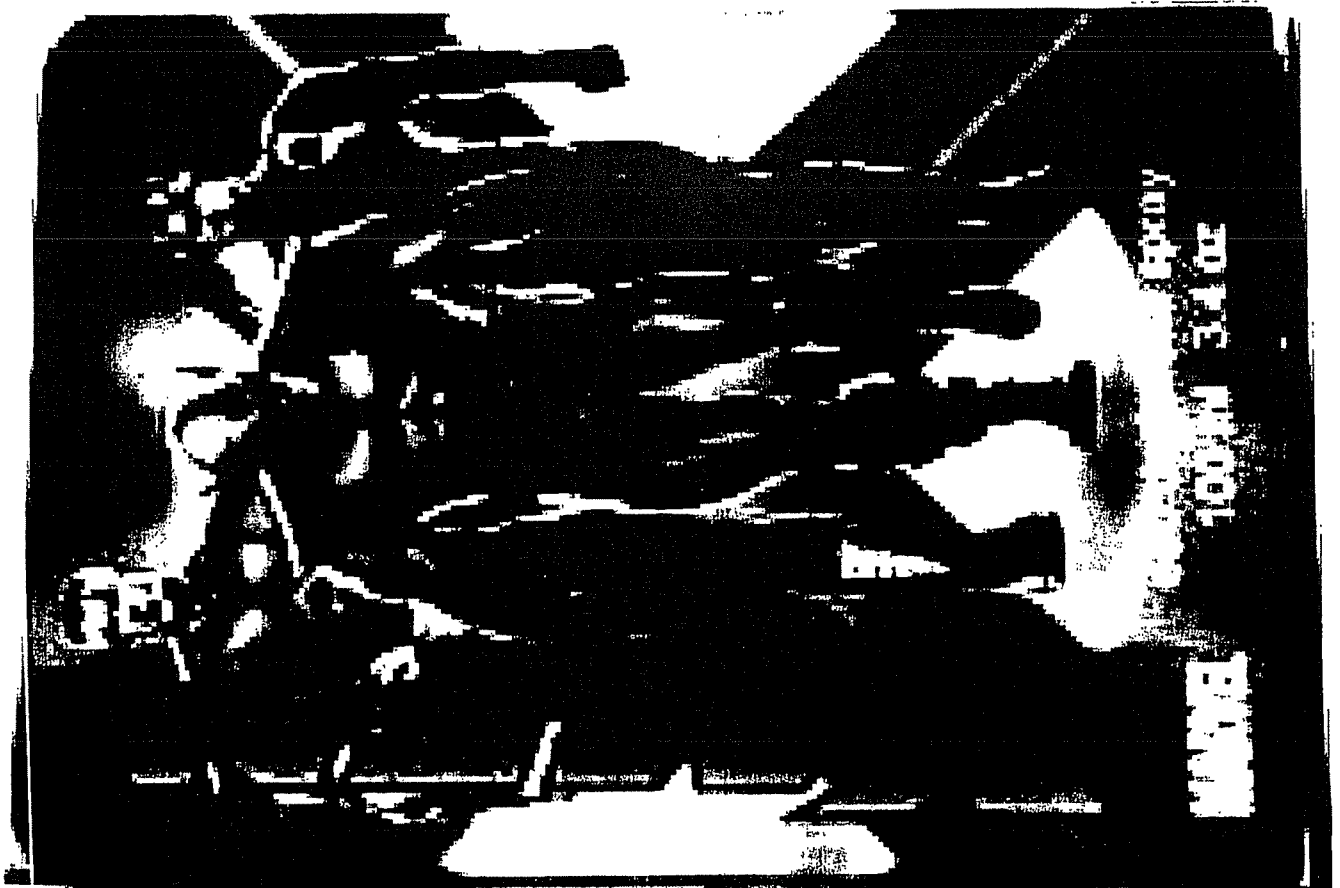
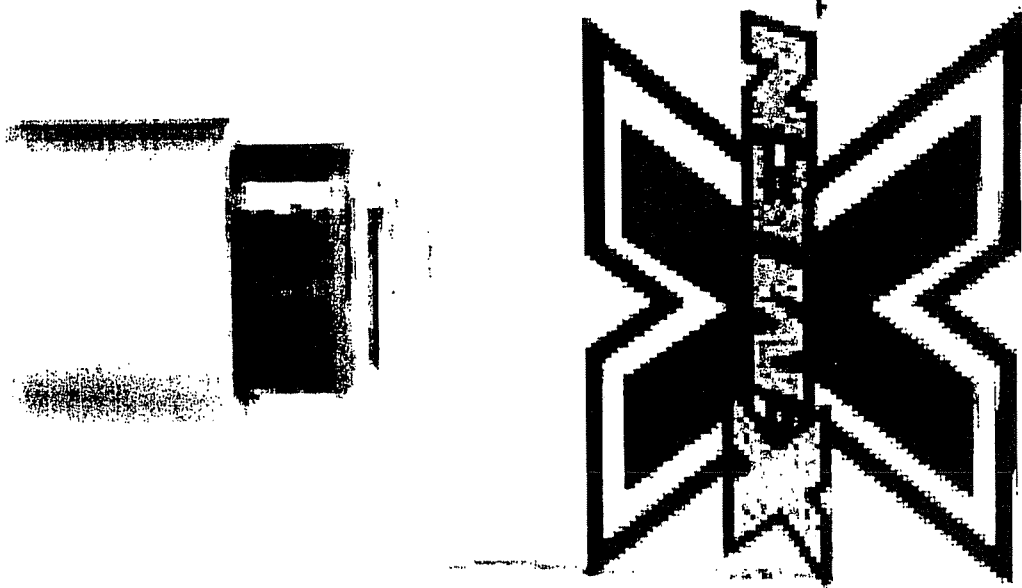
SER. NO. 78-465,204, FILED 8-10-2004.

CHERYL STEPLIGHT, EXAMINING ATTORNEY

Exhibit C

NO ROAD









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# **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Michael Craig Silver  
Application Ser. No.: 78/823,155  
Filing Date: 2/24/06  
Mark: SUPER HERO  
Date of Publication in OG: 1/16/07  
Opposer: DC Comics and Marvel Characters, Inc.

DC COMICS and  
MARVEL CHARACTERS, INC.,

Opposer,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

**OPPOSER'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO APPLICANT**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposers DC Comics and Marvel Characters, Inc. (collectively, "Opposer") request that Applicant Michael Craig Silver ("Applicant") produce for inspection and copying at the Offices of Kenyon & Kenyon LLP, One Broadway, New York, New York

10004, or such other location as shall be mutually agreed upon by counsel for the parties, within thirty (30) days of service hereof, the documents and things identified below.

### **DEFINITIONS**

For the purposes of these requests, the definitions set forth in Opposer's concurrently served "Opposer's First Set of Interrogatories to Applicant" are hereby incorporated by reference as if fully set forth herein, except as changed herein. Reference to a particular interrogatory herein refers to the corresponding interrogatory from "Opposer's First Set of Interrogatories to Applicant."

### **INSTRUCTIONS**

All documents shall be segregated and identified by the number of the request to which they are primarily responsive.

For each document requested herein which is sought to be withheld by Applicant under a claim of privilege or other objection, provide the following information:

1. the nature of the privilege, e.g., work product, which is being claimed;
2. the place, approximate date, and manner of recordation or preparation of the document;
3. the name and title of the sender and the name and title of each recipient of the document;
4. the name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;
5. the name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization;
6. the number of the request herein to which the document is responsive;

7. a brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).

**DOCUMENTS REQUESTED**

1. All documents identified by Applicant in response to "Opposer's First Set of Interrogatories to Applicant" which are not otherwise covered by these requests.
2. All documents concerning any topic of inquiry contained in "Opposer's First Set of Interrogatories to Applicant."
3. All documents concerning Applicant's conception of, adoption of, or decision to use SUPER HERO.
4. Documents sufficient to show Applicant's use or intended use of SUPER HERO in connection with any Products or Services sold or offered for sale or distributed by Applicant, or intended to be sold or offered for sale or distributed by Applicant.
5. Representative samples of each Product or Service ever sold or offered for sale, or distributed by Applicant, or intended to be sold or offered for sale or distributed by Applicant, in connection with SUPER HERO, as well as any and all accompanying product packaging, labels, tags, product literature and/or instruction manuals.
6. Representative samples of purchase orders, invoices, communications, and/or any other documents or materials related to any of Applicant's Products or Services sold, offered for sale, rendered, or distributed in connection with SUPER HERO for each year since the date of first use.

7. Representative samples sufficient to illustrate Applicant's present, past and/or intended use of SUPER HERO on letterhead, signs, websites, invoices, labels, tags, and product packaging.
8. All documents concerning Applicant's licensing policy with regard to SUPER HERO.
9. All documents concerning any assignment of SUPER HERO.
10. All documents concerning any license or other agreement regarding SUPER HERO.
11. All documents concerning any negotiations for licenses or other agreements regarding SUPER HERO.
12. All documents concerning any effort to exploit or commercialize any Product or Service under SUPER HERO.
13. All documents concerning any application for registration, registration, or attempted registration by Applicant for SUPER HERO for any Product or Service:
  - (a) in the United States Patent and Trademark Office (other than the subject application); and
  - (b) in any state or states of the United States.
14. Documents sufficient to show total sales, by year, in terms of revenue, gross profits, and net profits, regardless of whether such sales were made directly by Applicant, a licensee of Applicant, or other third party, by volume and dollar amount, for each Product or Service sold, or offered for sale, under SUPER HERO.
15. All documents concerning any civil action, or proceeding in the United States Patent and Trademark Office (other than this Opposition), filed by or against Applicant, concerning SUPER HERO, including without limitation:
  - (a) Copies of all pleadings and documents submitted in support or in defense

of any such action or proceeding; and

- (b) Copies of any settlement agreement, coexistence agreement, final judgment, or consent decree.

16. Representative samples of advertisements, promotional items, marketing materials, letters, posters, brochures, leaflets, or flyers printed, disseminated, or commissioned by Applicant in which SUPER HERO has appeared.

17. Copies of each television commercial, video presentation, or radio script prepared or commissioned by Applicant, regardless of whether the television commercial, video presentation, or radio script was actually released, aired or used, in which SUPER HERO has ever appeared, currently appears, or will appear.

18. Documents sufficient to show Applicant's actual or planned annual expenditures on efforts to advertise, market, or otherwise promote, through any form of media, including but not limited to print, television, radio, trade shows and the Internet, any of its Products or Services sold or offered for sale under SUPER HERO.

19. All documents concerning the channels of trade utilized, or planned to be utilized, by Applicant, including but not limited to the Internet, retail establishments, buying agents, individuals, or corporations, in selling or offering for sale Applicant's Products and Services under SUPER HERO.

20. All documents concerning any actual or planned participation or appearance by Applicant, or any licensee of Applicant, at trade shows, conventions, seminars, or any event open to the public, where Products and Services sold or offered for sale under SUPER HERO were or are planned to be displayed, including but not limited to photographs of each exhibit, booth, table, and the like, and samples of all flyers, advertisements, mailers, and any other

promotional materials, whether distributed or not, created by or for Applicant for use at said trade shows, conventions, seminars, or events open to the public.

21. All documents concerning any investigation, market study, survey, including pre-tests, or poll conducted by Applicant, or by any person or persons acting for or on behalf of Applicant, concerning any matter relating to the instant proceeding.

22. All documents concerning any investigation of the marketplace conducted by or for Applicant with respect to SUPER HERO or Opposer's Marks.

23. All documents concerning any surveys, consumer research, marketing studies, consumer recognition studies and/or consumer opinion polls conducted by or on behalf of Applicant in connection with SUPER HERO or Opposer's Marks.

24. All reports, memoranda, notes, correspondence, communications, or other documents relating to, bearing upon, commenting on, concerning, or discussing the retention or possible retention of expert witnesses for use by Applicant in connection with this Opposition.

25. All reports, memoranda, notes, correspondence, communications, or other documents concerning the opinion of any experts consulted or retained by Applicant, or by any person or persons acting for or on Applicant's behalf, in connection with this Opposition.

26. All documents concerning Applicant's knowledge of Opposer and/or Opposer's use of Opposer's Marks.


27. All documents concerning the first time Applicant obtained knowledge or information concerning Opposer's Marks.

28. All documents, communications, or inquiries received by Applicant from any third party regarding questions or confusion as to the existence of an affiliation or connection of any kind between Applicant and Opposer.

- 
29. All documents concerning any inquiry or unsolicited comments by any member of the media or the public, whether by publication, letter, telephone, email, or any other form, regarding SUPER HERO.
30. All documents concerning any inquiry or unsolicited comments by any member of the media or the public, whether by publication, letter, telephone, email, or any other form, regarding Opposer's Marks.
31. All documents concerning any instances of actual confusion as to the existence of an affiliation, connection, partnership or relationship between Applicant and Opposer.
32. All documents concerning any warning, complaint, or objection by Applicant, or by any person acting for or on behalf of Applicant, to any use, application for registration, or registration, by any third party, of any mark claimed by Applicant to be confusingly similar to SUPER HERO.
33. Copies of any and all statements or opinions of any person, other than an attorney rendering legal advice to Applicant, regarding this Opposition.
34. All search reports, including without limitation trademark clearance search reports, or other investigation materials regarding any search or investigation conducted by or on behalf of Applicant concerning SUPER HERO, Opposer's Marks, or any marks or names similar thereto.
35. All documents embodying, explaining, or discussing Applicant's document retention policy associated with SUPER HERO.



Dated: May 5, 2008

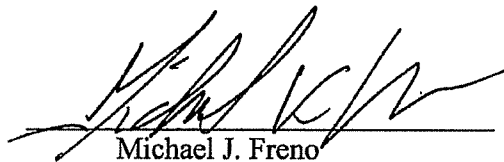
KENYON & KENYON LLP  
  
By: \_\_\_\_\_  
Jonathan D. Reichman  
Michael J. Freno  
One Broadway  
New York, New York 10004  
(212) 425-7200

*Attorneys for Opposer*

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO APPLICANT has been served on May 5, 2008 by mailing said copy via first-class mail and by overnight delivery by commercial courier to:

Michael Craig Silver  
3229 Steiner Street  
San Francisco, California 94123  
530.320.6488



Michael J. Freno

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# EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Michael Craig Silver  
Application Ser. No.: 78/823,155  
Filing Date: 2/24/06  
Mark: SUPER HERO  
Date of Publication in OG: 1/16/07  
Opposer: DC Comics and Marvel Characters, Inc.

DC COMICS and  
MARVEL CHARACTERS, INC.,

Opposer,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

**OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT**

Pursuant to Rule 2.120(d)(1) of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposers DC Comics and Marvel Characters, Inc. (collectively "Opposer") request that Applicant Michael Craig Silver ("Applicant") answer the following interrogatories fully and separately in writing and under oath within thirty (30) days of service hereof.

## **DEFINITIONS**

As used herein:

1. The term "Applicant" collectively refers to Michael Craig Silver, his licensees or licensors, and any other person or entity in privity with him, including, but not limited to, that entity's affiliates, partnerships, predecessor, parent, subsidiary, licensor, licensee, officer, director, partner, or attorney. In any instance where an interrogatory answer differs as between Applicant and any entity's predecessors, parents, subsidiaries, licensors, licensees, officers, directors, partners, attorneys, or other person or entity in privity with Applicant, or is applicable only to one of them, the answer shall so state, setting forth such difference and stating separately all information applicable to Applicant and all information applicable to any other party.
2. The term "Opposer" refers collectively to DC Comics and Marvel Characters, Inc.
3. The term SUPER HERO refers to Applicant's mark as embodied in Application Serial No. 78/823,155, which is the subject of Opposition No. 91/176,744 filed by Opposer, unless otherwise stated or unless obvious from the context of the interrogatory.
4. The term "Opposer's Marks" collectively refers to Opposer's trademarks as embodied in each of the registrations, applications and common law rights cited by Opposer in its Notice of Opposition filed against SUPER HERO on April 13, 2007, including without limitation U.S. Reg. No. 825,835 (SUPER HERO), Reg. No. 1,140,452 (SUPER HEROES), and Reg. No. 1,179,067 (SUPER HEROES), Appl. No. 78/946,654 (MY FIRST SUPER HERO).
5. The term "Notice of Opposition" refers to the Notice of Opposition filed by Opposer in connection with Opposition No. 91/176,744.

6. The term "Applicant's Products and Services," "Products," "Product," "Services," or "Service" means each or all products or services ever sold or offered for sale, rendered, or distributed, or intended to be sold or offered for sale, rendered, or distributed by or with the authorization of Applicant, in connection with SUPER HERO, as well as any written or printed materials, including advertisements and marketing materials, related thereto.

7. The term "sold," as used in these definitions and interrogatories, means products or services paid for, transferred, rendered, or provided free of charge.

8. The terms "communication," "writing," and "document" are used in their customary broad sense as described in Federal Rule of Civil Procedure 34 and include, but are not limited to, copies of orders, acknowledgements thereof, contracts, invoices, bills, receipts, checks, books, records, reports, financial statements, letters, telegrams, notes, memoranda, calculations, diaries, worksheets, drafts, advertisements, and other tangible things, including without limitation originals and copies, whether typed, handwritten, or on tape, computer disc, some other recording or in electronic format, from whatever source, and any material underlying, supporting, or used in the preparation of any of such document or documents.

9. The term "identify," when used in reference to a natural person, means to:

- (a) state his or her full name;
- (b) state his or her present or last-known address;
- (c) state his or her present or last-known employer or business affiliation; and
- (d) state his or her occupation and business position held and the length of time in such position.

10. The term “identify,” when used in reference to a corporation, partnership, or other business entity, means to:

- (a) state its full name;
- (b) state its present or last-known principal place of business;
- (c) state the nature of its business;
- (d) in the case of a corporation, set forth its State of incorporation;
- (e) state the identities of persons having knowledge of the matter with respect to which the company is named; and
- (f) state the identity(ies) of the executive officer or officers of the company.

11. The term “identify,” when used in reference to a document, means to:

- (a) state the date, author, recipient, and type of document (e.g., invoice, delivery receipt, etc.) or some other means of distinguishing the document;
- (b) state the identity of each person who prepared the document;
- (c) state the identity of each person who received the document;
- (d) state the present location of the document;
- (e) state the manner and dates of distribution and publication of the document, if any; and
- (f) state the identity of each person having possession, custody, or control of the document.

12. The phrase “describe in detail” means that Applicant is requested to state with specificity each and every fact, ultimate fact, particular circumstance, incident, act, omission, detail, event,

and date, and to identify each and every document, as herein defined, relating thereto or in any way whatsoever concerning the matters inquired of.

13. The singular form of a word shall be understood to include the plural, and vice versa.

14. The conjunctive shall be understood to include the disjunctive, and vice versa.

### **INSTRUCTIONS**

In answering each Interrogatory:

1. Identify each document or tangible thing and each oral communication which forms the basis, in whole or in part, for the answer given or which corroborates or negates the answer given or the substance of which is given, and either annex true copies of each such document or offer to make the same available for inspection and copying. The unexplained failure to annex a true copy of such document or to offer to make the same available for inspection and copying shall constitute a representation that such document does not exist.

2. In lieu of identifying a document or tangible thing, Applicant's production of a copy or photograph thereof or production of the document or thing for inspection and copying by Opposer's counsel (pursuant to the request for production) shall be deemed sufficient unless such further identification of each such document or thing is requested. The particular interrogatory to which the document is responsive must be designated for each document produced.

3. If a document which corroborates or negates an answer given, or the substance of which is given, is not in the possession of or available to Applicant, then supply a copy thereof, identified as required by Definition No. 11 above, within ten (10) days after such document comes into the possession of or becomes available to Applicant, or offer to make same available for inspection and copying.

4. If a document has been destroyed or is alleged to have been destroyed, then



state the date of and the reason for its destruction, and identify each person having knowledge of the document's destruction and each person responsible for the document's destruction.

5. State whether the information furnished is within the personal knowledge of the individual signing the interrogatory answers, and, if not, identify each person to whom the information is a matter of personal knowledge, if known.

6. With respect to each answer or document which Applicant contends is privileged or otherwise excludable from discovery, provide the information required by Fed. R. Civ. P. 26(b)(5) and, in addition, state the basis for the privilege or other grounds for exclusion, as well as the name and address of the author, the date of the privileged information, the general subject matter, the name and address of every recipient of the original or any copy of the document, the name and address of each person who now has the original or any copy, and the identification and location of the files where the original and each such copy are normally kept.

7. When producing any document or thing in partial or full response to any of the Interrogatories, reference the Interrogatory or Interrogatories to which the document or thing is responsive.

8. These interrogatories are continuing in character and with respect to any information hereinafter becoming known or any document hereinafter coming to the attention of Applicant, Applicant is requested to supply the same pursuant to the provisions of Federal Rule of Civil Procedure 26(e).

#### **INTERROGATORIES**

1. Identify and describe each Product or Service.
2. For each Product or Service identified in response to Interrogatory No. 1, state:

- 
- (a) the date SUPER HERO was first used anywhere and the date SUPER HERO was first used in interstate commerce;
  - (b) the manner in which Applicant uses, or intends to use, SUPER HERO;
  - (c) the period or periods (specifying dates) during which each such Product or Service was rendered, offered, sold, promoted, marketed or distributed by or under the authority of Applicant;
  - (d) total sales, by year, in terms of units, revenue and profits, regardless of whether such sales were made directly by Applicant or under the authority of Applicant.
3. Identify the person most knowledgeable about Applicant's advertising and promotion of Products or Services for each year since SUPER HERO was first used, or about Applicant's intended advertising or promotion.
4. Identify the person most knowledgeable about Applicant's sales of Products or Services for each year since SUPER HERO was first used, or about Applicant's intended sales.
5. Identify the person most knowledgeable about the actual or intended manufacture, construction, formulation, design, development, or creation of each of Applicant's Products or Services.
6. Describe all channels of trade through which Applicant's Products or Services are, or are intended to be, distributed from Applicant on through to the ultimate purchasers or users of such Products or Services.
7. Describe the average consumer whom Applicant believes is most likely to be interested in purchasing his Products or Services, including the average income, age, and profession of such average consumer.

8. Identify each publication or type of publication in which any advertisement or promotion for Applicant's Products or Services has appeared or is planned to appear, including, but not limited to, newspapers, magazines, or Internet websites.
9. Identify each television station, radio station, or Internet website on which any advertisement for Applicant's Products or Services has been, is currently being, will be, or is planned to be, broadcast or exhibited.
10. Identify any use of SUPER HERO, or any marks similar thereto, by any third party.
11. State, by year, the total cost of advertising, marketing, or promoting Applicant's Products or Services through any and all forms of media, including, but not limited to, print, television, radio, trade shows, and the Internet.
12. State the retail and wholesale prices at which Applicant has sold, or plans to sell, each of its Products or Services.
13. Identify the retail stores, or types of retail stores, in which Applicant has sold, or plans to sell, each of its Products or Services.
14. Identify and describe the consumers (identified by gender, age group(s), education level(s), and socioeconomic status) to whom Applicant has sold, or plans to sell, each of its Products or Services.
15. Identify the person most knowledgeable about Applicant's conception and creation of SUPER HERO.
16. State when Applicant first became aware of any of Opposer's Marks.
17. Identify and describe the circumstances and resolution of any inquiry, question, comment, concern or belief expressed by any third party to Applicant, including but not limited to individuals, media, corporations or any governmental body or office, as to the origin

of any of Applicant's Products or Services, or any third party products or services including those of Opposer, which bear SUPER HERO or Opposer's Marks.

18. Identify and describe the circumstances and resolution of any complaint, protest, objection, or comment directed to Applicant by any third party relating to Applicant's Products or Services, or to Applicant's use of SUPER HERO.

19. State whether Applicant, or anyone acting on Applicant's behalf, has ever conducted any market study, survey, or opinion poll concerning SUPER HERO or Opposer's Marks.

20. Identify any disputes, including, but not limited to, lawsuits, oppositions, written objections, or threatened litigations, concerning the use, application, or registration of (a) SUPER HERO, or (b) any mark or name which Applicant claimed might violate his purported rights in SUPER HERO.

21. State whether Applicant, or anyone acting on Applicant's behalf, ever conducted an investigation, including but not limited to a trademark search, regarding the availability of SUPER HERO, and, if so, provide the particulars of same.

22. State whether Applicant has ever sought or received the opinion of an attorney regarding the trademark availability of SUPER HERO.

23. State whether Applicant, or anyone acting on Applicant's behalf, has ever entered into a license, assignment or other agreement regarding SUPER HERO and, if so, provide the particulars of same.


24. State whether Applicant, or anyone acting on Applicant's behalf, has ever entered into negotiations with a potential licensee or other third party regarding the exploitation of any Product or Service under SUPER HERO and, if so, provide the particulars of same.

25. State whether Applicant, or anyone acting on Applicant's behalf, has made any effort to exploit or commercialize any Product or Service under SUPER HERO and, if so, provide the particulars of same.

26. Describe why Applicant selected SUPER HERO as a trademark for his Products or Services.

27. Has Applicant taken any steps towards manufacturing, distributing, selling, and/or promoting any Products or Services under the SUPER HERO trademark? If so, please describe all such steps.

Dated: May 5, 2008

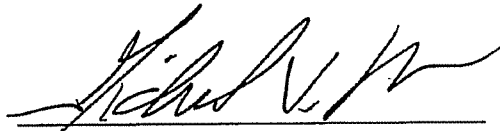
KENYON & KENYON LLP  
By:   
Jonathan D. Reichman  
Michael J. Freno  
One Broadway  
New York, New York 10004  
(212) 425-7200

*Attorneys for Opposer*

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT has been served on May 5, 2008 by mailing said copy via first-class mail and by overnight delivery by commercial courier to:

Michael Craig Silver  
3229 Steiner Street  
San Francisco, California 94123  
530.320.6488

  
Michael J. Freno

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# **EXHIBIT D**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Michael Craig Silver  
Application Ser. No.: 78/823,155  
Filing Date: 2/24/06  
Mark: SUPER HERO  
Date of Publication in OG: 1/16/07  
Opposer: DC Comics and Marvel Characters, Inc.

DC COMICS and  
MARVEL CHARACTERS, INC.,

Opposer,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

**OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, Opposers DC Comics and Marvel Characters, Inc. (collectively, "Opposer") request that Applicant Michael Craig Silver ("Applicant") admit in writing and under oath the truth of the following requests within thirty (30) days of service hereof. These requests for admission are deemed to be continuing, and any further information that may be discovered



subsequent to the service of Applicant's answers should be brought to Opposer's attention through supplemental admissions within a reasonable time following such discovery.

### **DEFINITIONS AND INSTRUCTIONS**

For the purposes of these requests for admission, the definitions set forth in Opposer's concurrently served "Opposer's First Set of Interrogatories to Applicant" are hereby incorporated by reference as if fully set forth herein, except as follows:

1. The term "Skin Care Products" means the products covered in Applicant's Application Serial No. 78/823,155.
2. The term "Class 3 Products" means the following products falling within International Class 3: soaps, perfumery, essential oils, cosmetics, hair lotions, and dentifrices.

The following instructions also apply:

1. If any Request for Admission is not answered, pursuant to Fed.R.Civ.P. 36, such Request will be deemed admitted.
2. Any answer to these Requests for Admission shall specifically admit or deny the admission requested or set forth in detail the reason why Applicant cannot truthfully admit or deny the admission. For any responses which are anything other than an unqualified admission, Applicant shall admit whatever portion of the Request is conceded to be true, and explain the basis for denying the balance of the Request.

### **REQUESTS FOR ADMISSION**

1. Admit that Applicant is not currently using SUPER HERO on any Skin Care Products.
2. Admit that Applicant is not currently using SUPER HERO on, or in connection with, any Products or Services.
3. Admit that Applicant has not used SUPER HERO in commerce.

4. Admit that, since prior to February 24, 2006, Applicant has been aware of Opposer's mark SUPER HEROES and variations thereof (including, without limitation, "SUPER HERO").
5. Admit that, since prior to February 24, 2006, Applicant has been aware that the mark SUPER HEROES, and variations thereof (including "SUPER HERO"), have been used by Opposer.
6. Admit that Opposer has used and/or licensed its character properties and trademarks for use in connection with Class 3 Products.
7. Admit that Opposer has used and/or licensed one or more of its character properties and trademarks for use in connection with cosmetics, namely lipstick, lip gloss and non-medicated lip balm; mascara; nail enamel; face powder, face cream, skin lotion and skin gel; bath powder and perfumed body powder; bath oil, bath gel and non-medicated bath salts; baby oil, baby powder, baby gel and baby lotion; hand cream and lotion; body cream and lotion; sunscreen preparation, namely cream and lotion; shaving cream and after-shave lotion, skin cleanser and non-medicated body soaks; body deodorant, cologne and perfume; soaps namely liquid bath soap, gel soap and bar soap; detergent soap, namely, liquid and powder; fabric softener; deodorant soap, skin soap; shampoo and shampoo conditioner; and hairstyling gel.
8. Admit that Opposer has used and/or licensed one or more of its character properties and trademarks for use in connection with cologne.
9. Admit that Opposer has used and/or licensed one or more of its character properties and trademarks for use in connection with bubble bath.
10. Admit that the public associates "SUPER HEROES" and variations thereof (including without limitation "SUPER HERO"), when used as a mark, with Opposer.

11. Admit that distributors who distribute Skin Care Products associate “SUPER HEROES” and variations thereof (including without limitation “SUPER HERO”), when used as a mark, with Opposer.
12. Admit that retailers who sell, or offer for sale, Skin Care Products associate “SUPER HEROES” and variations thereof (including without limitation “SUPER HERO”), when used as a mark, with Opposer.
13. Admit that advertisers who advertise Skin Care Products associate “SUPER HEROES” and variations thereof (including without limitation “SUPER HERO”), when used as a mark, with Opposer.
14. Admit that distributors who distribute Class 3 Products associate “SUPER HEROES” and variations thereof (including without limitation “SUPER HERO”), when used as a mark, with Opposer.
15. Admit that retailers who sell, or offer for sale, Class 3 Products associate “SUPER HEROES” and variations thereof (including without limitation “SUPER HERO”), when used as a mark, with Opposer.
16. Admit that advertisers who advertise Class 3 Products associate “SUPER HEROES” and variations thereof (including without limitation “SUPER HERO”), when used as a mark, with Opposer.
17. Admit that cartoon characters owned by third parties have been used on or in connection with Skin Care Products.
18. Admit that cartoon characters owned by third parties have been used on or in connection with Class 3 Products.
19. Admit that Winnie the Poo has appeared on Skin Care Products.

20. Admit that Tinker Bell has appeared on Skin Care Products.
21. Admit that Little Mermaid has appeared on Skin Care Products.
22. Admit that Nemo has appeared on Skin Care Products.
23. Admit that Superman has appeared on a band-aid product.
24. Admit that Wolverine has appeared on a toothpaste product.
25. Admit that Spider-Man has appeared on a toothbrush product.
26. Admit that Superman has appeared on a toothbrush product.
27. Admit that Spider-Man has appeared on a vitamin product.
28. Admit that Skin Care Products are typically sold in drug stores.
29. Admit that consumers expect to find Skin Care Products in drug stores.
30. Admit that Class 3 Products are typically sold in drug stores.
31. Admit that consumers expect to find Class 3 Products in drug stores.
32. Admit that Skin Care Products are typically sold in supermarkets.
33. Admit that consumers expect to find Skin Care Products in supermarkets.
34. Admit that Class 3 Products are typically sold in supermarkets.
35. Admit that consumers expect to find Class 3 Products in supermarkets.
36. Admit that Skin Care Products can be found at "big box" retail stores such as Wal-Mart and Target.
37. Admit that consumers expect to find Skin Care Products at "big box" retail stores such as Wal-Mart and Target.
38. Admit that Class 3 Products can be found at "big box" retail stores such as Wal-Mart and Target.

39. Admit that consumers expect to find Class 3 Products at "big box" retail stores such as Wal-Mart and Target.
40. Admit that toys are typically sold in drug stores.
41. Admit that consumers expect to find toys in drug stores.
42. Admit that comic books are typically sold in drug stores.
43. Admit that consumers expect to find comic books in drug stores.
44. Admit that masquerade costumes are typically sold in drug stores.
45. Admit that consumers expect to find masquerade costumes in drug stores.
46. Admit that stationery products are typically sold in drug stores.
47. Admit that consumers expect to find stationery products in drug stores.
48. Admit that toys are typically sold in supermarkets.
49. Admit that consumers expect to find toys in supermarkets.
50. Admit that comic books are typically sold in supermarkets.
51. Admit that consumers expect to find comic books in supermarkets.
52. Admit that masquerade costumes are typically sold in supermarkets.
53. Admit that consumers expect to find masquerade costumes in supermarkets.
54. Admit that stationery products are typically sold in supermarkets.
55. Admit that consumers expect to find stationery products in supermarkets.
56. Admit that toys are typically sold in "big box" retail stores such as Wal-Mart and Target.
57. Admit that consumers expect to find toys in "big box" retail stores such as Wal-Mart and Target.
58. Admit that comic books are typically sold in "big box" retail stores such as Wal-Mart and Target.

- 
59. Admit that consumers expect to find comic books in "big box" retail stores such as Wal-Mart and Target.
  60. Admit that masquerade costumes are typically sold in "big box" retail stores such as Wal-Mart and Target.
  61. Admit that consumers expect to find masquerade costumes in "big box" retail stores such as Wal-Mart and Target.
  62. Admit that stationery products are typically sold in "big box" retail stores such as Wal-Mart and Target.
  63. Admit that consumers expect to find stationery products in "big box" retail stores such as Wal-Mart and Target.
  64. Admit that children are generally more impulsive consumers than adults.
  65. Admit that Applicant is not aware of any third party using, or proposing to use, SUPER HERO (or any similar trademark) in connection with Skin Care Products.
  66. Admit that Applicant is not aware of any third party using, or proposing to use, SUPER HERO (or any similar trademark) in connection with Class 3 Products.
  67. Admit that Opposer holds exclusive rights in SUPER HERO as a trademark for masquerade costumes.
  68. Admit that Opposer holds exclusive rights in SUPER HEROES as a trademark for toy figurines.
  69. Admit that Opposer holds exclusive rights in SUPER HEROES as a trademark for comic books.
  70. Admit that Opposer holds exclusive rights in SUPER HEROES as a trademark for notebooks and stamp albums.

71. Admit that DC Comics intends to use MY FIRST SUPER HERO as a trademark for face powder, face cream, skin lotion and skin gel, body powder, bath oil, bath gel and non-medicated bath salts, hand cream and lotion, body cream and lotion, sunscreen preparation, namely cream and lotion, shaving cream and after-shave lotion, skin cleanser and non-medicated body soaks.
72. Admit that Opposer has previously used SUPER HERO as a trademark for toilet soap.
73. Admit that Opposer has previously used SUPER HEROES as a trademark for tote bags.
74. Admit that Opposer has previously used SUPER HERO as a trademark for cake pan sets consisting of cake pan, decorative emblems and decorating instructions.
75. Admit that Opposer has previously used SUPER HEROES as a trademark for sheets, pillow cases and bedspreads.
76. Admit that Opposer has previously used SUPER HEROES as a trademark for toy banks, launching toys, puppets, and equipment for playing target games (and balls).
77. Admit that Opposer has previously used SUPER HEROES as a trademark for cookies.
78. Admit that the exploitation of character trademarks on Class 3 Products reflects a popular trend in consumer merchandising.
79. Admit that Skins Care Products are low-priced items over which consumers do not devote extensive consideration.
80. Admit that Class 3 Products are low-priced items over which consumers do not devote extensive consideration.
81. Admit that Applicant is not aware of any third party using SUPER HERO (or any similar trademark) as a trademark or service mark.
82. Admit that Skin Care Products and toys are purchased by the same types of consumers.

- 
83. Admit that Skin Care Products and comic books are purchased by the same types of consumers.
  84. Admit that Skin Care Products and masquerade costumes are purchased by the same types of consumers.
  85. Admit that Skin Care Products and stationery products are purchased by the same types of consumers.
  86. Admit that Skin Care Products and toys are sold in the same types of retail stores.
  87. Admit that Skin Care Products and comic books are sold in the same types of retail stores.
  88. Admit that Skin Care Products and masquerade costumes are sold in the same types of retail stores.
  89. Admit that Skin Care Products and stationery products are sold in the same types of retail stores.
  90. Admit that Class 3 Products and toys are purchased by the same types of consumers.
  91. Admit that Class 3 Products and comic books are purchased by the same types of consumers.
  92. Admit that Class 3 Products and masquerade costumes are purchased by the same types of consumers.
  93. Admit that Class 3 Products and stationery products are purchased by the same types of consumers.
  94. Admit that Class 3 Products and toys are sold in the same types of retail stores.
  95. Admit that Class 3 Products and comic books are sold in the same types of retail stores.



96. Admit that Class 3 Products and masquerade costumes are sold in the same types of retail stores.
97. Admit that Class 3 Products and stationery products are sold in the same types of retail stores.
98. Admit that toy figurines are low-priced items over which consumers do not devote extensive consideration.
99. Admit that comic books are low-priced items over which consumers do not devote extensive consideration.
100. Admit that masquerade costumes are low-priced items over which consumers do not devote extensive consideration.
101. Admit that stationery products are low-priced items over which consumers do not devote extensive consideration.

Dated: May 5, 2008

By:

KENYON & KENYON LLP



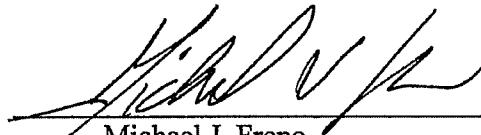
Jonathan D. Reichman  
Michael J. Freno  
One Broadway  
New York, New York 10004  
(212) 425-7200

*Attorneys for Opposer*

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT has been served on May 5, 2008 by mailing said copy via first-class mail and by overnight delivery by commercial courier to:

Michael Craig Silver  
3229 Steiner Street  
San Francisco, California 94123  
530.320.6488

  
Michael J. Freno

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# **EXHIBIT E**

In re Application of	:	Michael Craig Silver
Serial No.	:	78/823,155
Filed	:	February 24, 2006
For	:	SUPER HERO
Published Official Gazette	:	1/16/07
Opposer	:	DC Comics and Marvel Characters, Inc.

DC COMICS and	:	
MARVEL CHARACTERS, INC.	:	
	:	
Opposers,	:	
	:	Opposition # 91/176744
vs.	:	
	:	
MICHAEL CRAIG SILVER	:	
	:	
Applicant,	:	
	:	

- 1. Excludable or Privileged Information**  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
Recipient of original or copy of information: Michael Silver  
Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123  
Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123
- 2. Excludable or Privileged Information**  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
Recipient of original or copy of information: Michael Silver  
Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123  
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3. Excludable or Privileged Information  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
Recipient of original or copy of information: Michael Silver  
Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123  
Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123
4. Excludable or Privileged Information  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123
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Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
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Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
Recipient of original or copy of information: Michael Silver  
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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

- 
7. Excludable or Privileged Information  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
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  8. Excludable or Privileged Information  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
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Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
Recipient of original or copy of information: Michael Silver  
Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123  
Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

11. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123

Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

12. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123

Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

13. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

14. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

15. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123

Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

16. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 1/31/07

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123

Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

17. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

18. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123



19. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

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20. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

21. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

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Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

22. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123

Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

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23. Excludable or Privileged Information  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
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Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
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Subject Matter: SUPERHERO Trademark Application  
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25. Excludable or Privileged Information  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
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26. Excludable or Privileged Information  
Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege  
Name and Address of Author: Michael Silver  
Date of Privileged Information: 2/24/06  
Subject Matter: SUPERHERO Trademark Application  
Recipient of original or copy of information: Michael Silver  
Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123  
Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

27. Excludable or Privileged Information

Basis or Grounds: Fed. R. Civ. P. 26(b)(5) and Work Product Privilege

Name and Address of Author: Michael Silver

Date of Privileged Information: 2/24/06

Subject Matter: SUPERHERO Trademark Application

Recipient of original or copy of information: Michael Silver

Name and Address of person who now has the original or copy of files: Michael Silver, 3229 Steiner Street, San Francisco, CA 94123

Identification and location of files: 3229 Steiner Street, San Francisco, CA 94123

Dated: June 6, 2008

By:

A handwritten signature in black ink, appearing to read "Michael Silver", is written over a horizontal line.

Michael Silver

3229 Steiner Street

San Francisco, CA 94123

(530) 320-6488

Applicant

## **PROOF OF SERVICE**

I hereby certify that a true and complete copy of APPLICANT'S RESPONSE TO  
OPPOSER'S FIRST SET OF INTERROGATORIES has been served by mailing  
said copy on June 6, 2008, via first class mail, to:

Kenyon & Kenyon LLP  
Jonathan D. Reichman  
One Broadway  
New York, New York 10004

  
Michael C. Silver

---

# EXHIBIT F

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of : Michael Craig Silver  
Serial No. : 78/823,155  
Filed : February 24, 2006  
For : SUPER HERO  
Published Official Gazette : 1/16/07  
Opposer : DC Comics and Marvel Characters, Inc.

-----X  
DC COMICS and :  
MARVEL CHARACTERS, INC. :  
 :  
Opposers, :  
 :  
vs. :  
 :  
MICHAEL CRAIG SILVER :  
 :  
Applicant, :  
-----X

Opposition # 91/176744

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS**

1.
  - a. The nature of the privilege: Work product
  - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
  - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
  - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
  - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
  - f. The number of the request herein to which the document is responsive: 0
  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

2.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

3.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

4.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

5.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

6.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.



7.
  - a. The nature of the privilege: Work product
  - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
  - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
  - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
  - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
  - f. The number of the request herein to which the document is responsive: 0
  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.
  
8.
  - a. The nature of the privilege: Work product
  - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
  - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
  - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
  - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
  - f. The number of the request herein to which the document is responsive: 0
  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.
  
9.
  - a. The nature of the privilege: Work product
  - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
  - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
  - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

10.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

11.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

12.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

13.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

14.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
  - f. The number of the request herein to which the document is responsive: 0
  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.
- 15.
- a. The nature of the privilege or objection: Not applicable because no other civil action or proceeding exists.
- 16.
- a. The nature of the privilege: Work product
  - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/08
  - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
  - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
  - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
  - f. The number of the request herein to which the document is responsive: 0
  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.
- 17.
- a. The nature of the privilege: Work product
  - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
  - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
  - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
  - e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
  - f. The number of the request herein to which the document is responsive: 0
  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying

the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

18.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

19.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

20.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.

- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

21.

- a. The nature of the privilege: Work product
- h. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- i. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- j. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- k. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- l. The number of the request herein to which the document is responsive: 0
- m. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

22.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

23.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
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- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

24.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
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- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

25.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

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- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

26.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.

27.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7): SUPERHERO Trademark Application.



28.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 1/31/07, Hand written notes
- c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
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- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
- f. The number of the request herein to which the document is responsive: 0
- g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

29.

- a. The nature of the privilege: Work product
- b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
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30.

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- d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver

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- e. The name and corporate position, if any, of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading, or substantial summarization: Michael Silver
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  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.
31. No documents exist as no instance of any actual confusion has occurred as to the existence of an affiliation, connection, partnership or relationship between Applicant and Opposer.
32. No documents exist as no instance has occurred of any warning, complaint, or objection by Applicant, or by any person acting for or on behalf of Applicant, to any use, application for registration, or registration, by any third party, of any mark claimed by applicant to be confusingly similar to SUPER HERO.
33. No copies of any statements or opinions of any person exist regarding this Opposition as no such statements or opinions have occurred.
34. No search reports on behalf of Applicant concerning SUPER HERO, Opposer's Marks, or any other marks or names similar thereto exist, as no such reports were done.
- 35.
- a. The nature of the privilege: Work product
  - b. The place, approximate date, and manner of recordation or preparation of the document: San Francisco, CA., 2/24/06, Hand written notes
  - c. The name and title of sender and the name and title of each recipient of the document: Michael Silver, Applicant and Michael Silver, Applicant.
  - d. The name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document: Michael Silver
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  - g. A brief general description of the subject matter of the contents of the document; and the identity and corporate position, if any, of the person or persons supplying the information requested in subsections (2) through (7).: SUPERHERO Trademark Application.

Dated: June 6, 2008

By:

A handwritten signature in black ink, appearing to read "Michael Silver", written over a horizontal line.

Michael Silver  
3229 Steiner Street  
San Francisco, CA 94123  
(530) 320-6488

Applicant

## PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS has been served by mailing said copy on June 6, 2008 via first class mail, to:

Kenyon & Kenyon LLP  
Jonathan D. Reichman  
One Broadway  
New York, New York 10004

  
Michael C. Silver

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# EXHIBIT G

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of : Michael Craig Silver  
Serial No. : 78/823,155  
Filed : February 24, 2006  
For : SUPER HERO  
Published Official Gazette : 1/16/07  
Opposer : DC Comics and Marvel Characters, Inc.

-----X  
DC COMICS and :  
MARVEL CHARACTERS, INC. :  
 :  
Opposers, :  
 :  
vs. :  
 :  
MICHAEL CRAIG SILVER :  
 :  
Applicant, :  
-----X

Opposition # 91/176744

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR  
ADMISSION**

1. Admit
2. Admit
3. Admit
4. Deny
5. Deny
6. Deny
7. Deny
8. Deny
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97. Deny  
98. Deny  
99. Deny  
100. Deny  
101. Deny

Dated: June 6, 2008

By: \_\_\_\_\_

  
Michael Silver

3229 Steiner Street  
San Francisco, CA 94123  
(530) 320-6488

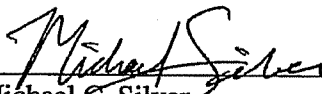
Applicant



## PROOF OF SERVICE

I hereby certify that a true and complete copy of APPLICANT'S RESPONSE TO  
OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION has been served by  
mailing said copy on June 6, 2008, via first class mail, to:

Kenyon & Kenyon LLP  
Jonathan D. Reichman  
One Broadway  
New York, New York 10004

  
Michael C. Silver

---

# EXHIBIT H

**APPLICANT'S AMMENDED /SUPPLEMENTAL RESPONSES TO**  
**INTERROGATORY NOS. 1-27**

1. Products for intended use are those products described in "International Class 003" of the Applicant's trademark application.
2.
  - a. Product not yet in use.
  - b. Intended to be used in commercial retail sales as a packaged good.
  - c. Product is not yet produced.
  - d. No sales present.
3. Michael Silver-Applicant
4. Michael Silver- Applicant
5. Michael Silver-Applicant
6. Channels of trade for intended sales include distributors, retail stores and internet sales.
7. The average consumer that might be most likely to purchase the Applicant's product would be one that has interest in the products specified in "International Class 03" as detailed in the Applicant's trademark application. No average income, age or profession of the "average consumer" is important to the Applicant.
8. No advertising of any products has occurred and no advertisement of the Applicant's products would be done through the normal paid advertising channels. All promotion of the product would be done by word of mouth from family and friends.
9. No advertising of the product has occurred nor will any advertising occur on any paid television, radio station or internet website. All promotion will be done as a grass roots effort to minimize expenses and will focus on word of mouth from friends and family.
10. Applicant does not know of any similar mark of SUPER HERO that has been used by any third party.
11. Applicant intends for all promotion is to be done as a grass roots effort and will not pay for any advertising, marketing or promotion.
12. Applicant does not know the retail or wholesale prices which Applicant plans to sell the product. No product has been sold presently.
13. No product has been sold yet. Applicant hopes to sell product to stores that welcome small, new brands that have quality products.
14. Applicant plans to sell it's product to all consumers no matter what gender, age group, education level or socioeconomic status they hold. No product has been sold yet.

15. Michael Silver-Applicant

16. Applicant first became aware of Opposer's marks on 1/31/07 when Opposer's counsel contacted Applicant. Opposer seems to have many marks and Applicant does not claim to know the existence of all of Opposer's marks, which marks are the Opposer's, when those marks were created and which marks are trademarked.

17. Applicant has not had any inquiry, question, comment, concern or belief expressed by any third party as to the origin of any of Applicant's products or any third party products or services including those of Opposer.

18. No complaint, protest, objection or comment has been directed to Applicant by any third party relating to Applicant's product or to Applicant's use of SUPER HERO.

19. No market study by Applicant or anyone acting on Applicant's behalf, has ever conducted a market study, survey, or opinion poll concerning SUPER HERO or Opposer's marks.

20. No disputes exists, besides the Opposer's trademark appeal, that might violate any purported rights to SUPER HERO.

21. No search regarding the availability of SUPER HERO was done by anyone acting on Applicant's behalf. Applicant does not believe that any search was ever done by himself. Applicant does not remember if any search of SUPER HERO was ever done by himself. Applicant has no notes or recollection of any search for SUPER HERO.

22. Applicant has not sought or received the opinion of any attorney.

23. Applicant has not, nor anyone acting on Applicant's behalf, has ever entered into a license, assignment or other agreement regarding SUPER HERO

24. Neither Applicant nor anyone acting on Applicant's behalf, has ever entered into negotiations with a potential licensee or other third party regarding the exploitation of any product under SUPER HERO.

25. Neither Applicant nor anyone acting on Applicant's behalf has made any effort to exploit or commercialize any product under SUPER HERO.

26. Applicant selected SUPER HERO after hearing someone that was not known to the Applicant, yell "super hero" to their dog in the park and the dog walked back to its owner. Because the dog was so cute the Applicant decided he would name the "International Class 3" products after the dog.

27. Applicant has not taken any steps towards manufacturing, distributing, selling, and or promoting any products under the SUPER HERO trademark.

Dated: October 2, 2008


By: Michael Silver  
Michael Silver  
64 Lincoln Drive  
Sausalito, CA 94965  
(530) 320-6488

Applicant

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of APPLICANT'S AMMENDED /  
SUPPLEMENTAL RESPONSES TO OPPOSER'S FIRST SET OF  
INTERROGATORIES TO APPLICANT has been served by mailing said copy on  
October 2, 2008, via first class mail, to:

Kenyon & Kenyon LLP  
Jonathan D. Reichman  
One Broadway  
New York, New York 10004

  
Michael C. Silver

---

# EXHIBIT I

**APPLICANT'S AMMENDED / SUPPLEMENTAL RESPONSES TO OPPOSER'S  
DOCUMENT REQUEST NOS. 1-14, 16-30 AND 35**

1. No documents applicable.
2. No documents applicable.
3. No documents applicable.
4. See Figure 1 detailing USPTO email confirmation of SUPER HERO mark application receipt.
5. No representative samples of the product that is intended to be sold exists. No product in connection with SUPER HERO has ever been sold, distributed for sale or offered for sale.
6. No date of first use exists so there are no representative samples of purchase orders, invoices, communications, and or any other documents or materials related to any of Applicant's products.
7. A representative sample to illustrate Applicants intended use of SUPER HERO on letterhead, signs, websites, invoices, labels, tags and product packaging can be evidenced in Figure 1 by the use of the Standard Characters depicting the mark, which are without claim to any particular font, style, size, or color.
8. Applicant has no documents concerning a licensing policy with regard to SUPER HERO.
9. Applicant has no documents concerning any assignment of SUPER HERO.
10. Applicant has no documents concerning any license or other agreement regarding SUPER HERO.
11. Applicant has no documents concerning any negotiations for license or other agreement regarding SUPER HERO. .
12. Applicant has no documents concerning any effort to exploit or commercialize any product under SUPER HERO.
13. Applicant has no documents concerning any application for registration, or attempted registration for SUPER HERO that is different than the subject application.
14. Applicant has no documents that show total sales. No sales have occurred under SUPER HERO either by applicant, a licensee of applicant or other third party.



16. SUPER HERO has appeared in no advertisements, promotional items, marketing materials, letters, posters, brochures, leaflets, or flyers printed, disseminated, or commissioned by applicant.

17. No television commercials, video presentation, or radio script has ever been prepared or commissioned by Applicant.

18. No documents exist to show Applicants actual or planned annual expenditures on efforts to advertise, market or otherwise promote any of its products offered for sale under SUPER HERO.

19. No documents exist.

20. No documents exist.

21. No documents exist.

22. No documents exist.

23. No documents exist.

24. No documents exist.

25. No documents exist.

26. See Figure 2. described as "Log Notes" from discussion about opposition.

27. See Figure 2. described as "Log Notes" from discussion about opposition.


28. No documents exist.

29. No documents exist.

30. No documents exist.

35. Applicant has no document retention policy and no documents exist that embody, explain or discuss any such policy.

Dated: October 2, 2008

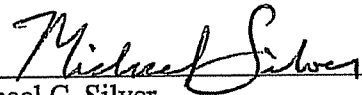
By:   
Michael Silver  
64 Lincoln Drive  
Sausalito, CA 94965  
(530) 320-6488

Applicant

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of APPLICANT'S AMMENDED /  
SUPPLEMENTAL RESPONSES TO OPPOSER'S DOCUMENT REQUEST NOS. 1-  
14, 16-30 AND 35 has been served by mailing said copy on October 2, 2008, via first  
class mail, to:

Kenyon & Kenyon LLP  
Jonathan D. Reichman  
One Broadway  
New York, New York 10004

  
Michael C. Silver

---

# EXHIBIT J

**FIGURE 1.**

**Michael Silver**

---

**From:** teas@uspto.gov  
**Sent:** Friday, February 24, 2006 2:26 PM  
**To:** mike@realtyla.com  
**Subject:** Received Your Trademark/Service Mark Application, Principal Register Form for serial number 78823155

**MARK:** SUPER HERO (Standard Characters)

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The literal element of the mark consists of SUPER HERO.

We have received your application and assigned serial number '78823155' to your submission. The summary of the application data below serves as your official filing receipt. For electronically-submitted applications, the USPTO will no longer mail a paper filing receipt. If the USPTO later determines that no filing date was justified, your submission will be returned, and your filing fee will be refunded. You could then, if possible, cure the deficiency, and re-file the application.

If you determine that you made an error in the information you entered, you may file a preliminary amendment electronically, stating your proposed correction, at <http://www.uspto.gov/teas/eTEASpageB2.htm>. NOTE: You cannot file a Preliminary Amendment until at least 30 days after initial filing of the application. Prior to that time, the serial number will not appear in the USPTO database (even though the number was assigned at the time of filing), preventing the uploading of new data.

**In approximately SEVEN (7) months, your application will be assigned to a USPTO examining attorney.** The examining attorney will determine whether the change proposed in the amendment is permissible, within the normal course of his or her review of the application. Please note that not all errors may be corrected; for example, if you submitted the wrong mark or the incorrect goods and/or services, if the proposed correction would be considered a material alteration to your original filing, this will NOT be accepted. Unfortunately, your only recourse in that event is to re-file - your fee would NOT be refunded. Once you submit an application, either electronically or through the mail, we will not cancel the filing or refund your fee, unless the application fails to satisfy minimum filing requirements. The fee is a processing fee, which we do not refund even if we cannot issue a registration after our substantive review.

**NOTE:** If you have a *technical* concern about your specific application, or a question or comment about electronic filing in general, please send an e-mail to [teas@uspto.gov](mailto:teas@uspto.gov). For *general* (i.e., non-technical) trademark information, please e-mail [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov), or telephone 1-800-786-9199.

**Status Information:** Check Trademark Applications and Registrations Retrieval to view current status information, as well as the complete prosecution history. Do **not** attempt to check status until at least 15 days after submission of a filing, to allow sufficient time for all USPTO databases to be updated. You can view **all** items listed in the prosecution history section online at Trademark Document Retrieval, including all office actions sent by the USPTO.

The applicant, Michael, Craig Silver, a citizen of United States, residing at 211 Woodhill Court, Tahoe City, California, United States, 96145, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 003: After sun creams; Beauty creams for body care; Cosmetic products in the form of aerosols for skincare; Non-medicated sun care preparations; Skin moisturizer; Skin toners; Sun block; Sun care lotions; Sun screen; Sun tan oil; Sun-block lotions

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services, and lists below the dates of use. 15 U.S.C. Section 1051(a), as amended.

2/24/2006

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.

The USPTO is authorized to communicate with the applicant or its representative at the following email address:  
mike@realtyia.com.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

#### Declaration Signature

Signature: /michael silver/ Date: 02/24/2006

Signatory's Name: /michael silver/

Signatory's Position: owner

---

#### TEAS XML SUBMISSION

---

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are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false
statements, and the like, may jeopardize the validity of the application or any resulting registration,
declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she
believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the

```

application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.</boilerplate-text>

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<reply-name>SILVER, MICHAEL, CRAIG</reply-name>

<reply-email>mike@realtyia.com</reply-email>

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Thank you,

The TEAS support team

Fri Feb 24 17:25:39 EST 2006

STAMP: USPTO/FTK-71.142.219.55-20060224172539012465-78823155-300aa441171589ec294e961f1cf854ee6b-CC-595-20060224170657972657

**FIGURE 2.**

1/31/07 | CALL ANDREW BAXLEY  
FOR HELP 571-272-4253

Atty John Reisman - (212) 908-6256\*  
(212) 425-7200

Called me @ letter

Superhero

Legal

Atty

LOG  
NOTES

2/2/07 J.R. Called wants extension

- Courtesy - (Counter Proposal)  
↓  
(#)

### Settlement Notice

- 1) Intent on Marketing Product - Done.
- 2) Presently have national distrib of other family product.
- 3) Know distrib channels of Bus =>  
↑ \$\$\$
- 4) Superhero has merit claim in this case
- 5) Marvel's interest unknown to me but:

Terms ~ Substantial ~ SFC ~ Distrib's

Enscreen  
Affny

2/5/07

1-676 80022 Ref# USPTO

1/

1st Extension done 2/7/07

~ 120 days possible

1st 30

2nd 60 > 90 days

initial =>

3rd 30 - 30

120 day limit

must => 180 Max Extension  
"Notice of Opposition"

"TTAB" - chap 200 - Ext  
chap 300 = Opposi

Consent

- Already Reviewed by Affny.
- Published already -> Registration

DC is holding up extension

2/5/07 M. left w/ John @ extension 30 days avail.

2/6/07. J.R. to email consult form

3/13/07 Returned JR's call

- ① license the Super Hero TM.  
John to get licensing terms.

3/15/07 ① Grant License on a Royalty Basis.

- ① 100% profits are mine - Marvel own Name

(No)

- ② ASK JR @ \$ to buy-out right (or

\$ to buy & then I license back name

3/19 - JR calls back - I tell him I to CB.  
L They want to buy TM outright.

11/27/07 xTheresa | Super Hero | USPTO  
Trademark TRIAL Appeal (571) 272-8500

5/11/07 M. left (Serial 78823155) (571) 272-8500  
← USPTO CB → new M.

S Hero

Opposition Due - 5/23/07

★

"Admit"  
- "Accept or Deny assertions"

- Send electronic Response

211 W H  
Address is  
of record

→ TM → left side → on-line filing  
'ESTTA'

- need answer in opposition

on-web -

Notes  
Answer  
over

Andrew Baxley Esq  
571-272-4253

Back 5/9/07

5/18/07 Answer filed

7/24/07 Atty

Gaynor Barbara Anne → Barb

tel (571) 272-9164 (Office 115)  
(M. left) x29164 mail

Change - PO Box

tel 571-272-4253

7/25/07 - Barb says answer received

Interlocutory x Andrew Baxley  
Attn: Trademark  
Trial Appeal  
Board

- USA Education, Inc.
- Nellie Mae Corporation
- Nellie Mae Education Loan Corporation
- SLFR, LLC
- SLM Mortgage Corp. - VA
- Education Debt Services, Inc.
- SLM Funding Corporation
- Student Loan Marketing Association
- Student Loan Funding Resources LLC
- Secondary Market Services, LLC
- SLM Financial Corporation
- SLM Financial Corp. - WV
- Sallie Mae Education Trust
- USA Group Noel Levitz, Inc.
- Sallie Mae Servicing L.P.
- SLM Education Loan Corp.
- HEMAR Insurance Corporation of America
- HICA Surety Corporation
- SLM Mortgage Corp. - NC
- Student Assistance Corporation
- True Careers, Inc.

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Address: 211 WH

USPTO

Electronic Forms  
of corresp. Address  
Form

Andrew Baxley  
Esp.

(571) 272-~~7764~~  
4253

"Opposition Proceeding"

5/11/07 - Andrew Barby Esq. | Due 5/23/07 (USPTO Share)

- Must file an answer

- Trademark Manual

- TMS → TTAB → <sup>USP TM Board</sup> Manual <sup>Proced.</sup> <sub>Format</sub>

TTAB = Section 309 → Contents of answer

(A) "Admit or Deny" - address each #

(B) No arguments needed.

① Pleading Stage. - Now

② Discovery

③ No advice Commercial Use

④ File on-line - US 3 - No form

Notes

Q's

Format/Reg's - Name of my (Answer to noticed) <sup>OPPS?</sup>  
(Q's) Notice P.S. by #S? & Reference = "Deny"

~~✗~~ Petition for cancellation of Opposition?

~~✗~~ 11 pt type - double spaced (or 12?)

(pg 34) ~~✗~~ "IN THE US PATENT & TRADEMARK..."

~~✗~~ ID of Opposition Applica<sup>Q</sup> Opposition #? \_\_\_\_\_

~~✗~~ Registration # "\_\_\_\_\_ for "petition to cancel"



7/25/07 M.w/A Baxley Esq @ States.

USPTO  
Shaw

AB says discovery period  
ends 10/30/07

A filed  
5/18/07

- Mark "Suspended" 11/1/07

- 5/18/07 - (OCT 25/07) - 0

- Trademark Trial & Appeal Bd. 8-5 AM EST

Notice & trial date

(571) 272-8500  
TEL

(Same Attorney)

11/2/07 - Dwayne Switchboard

1) Email Correspondence

2) Mail Address.

opposition # only

91176744

(Proceeding) #

10/25/07 - <sup>Proceeding hearing</sup> Suspended → Sum. Judgement (10/30/07)

11/2/07 Paralegal - Clara Vela (571) 272-4316 CB @ 11/9/07

(from Home)

→ M. left w/ Clara 11:30 PST

259

- Andrew Baxley 571-272-4253 M. 11:45 PST

T-TAB → "A Address in Bd Proceeding" File - online

OCT 25 → 35 days

11/2/07

Tell opposition

Set Correspondence Address to 2000 Broadw

→ T-TAB View - #8 submen

Att: Gaynor, Barbara Anne - Examiner

Super #

11/29/07

(571) 272-9164 #115 (T/L0113)

Andrew Baxby - "Brief & Response" → Due

- Evidence to create issue of  
Material fact - Response to

~~Due~~ CP issue:

§ 528 TBMP Response to  
Summary of -

TTAB online Filing #7 → EST 12 AM

12/27/07 - Mailed Copy of "A Brief in Response to Op request  
for Summary of & Proof of Service"

2/20/08 TTAB = opposition

5/5/08 Discovery Closes

12/19/07 - oral Argument denied

5/14/08

Superior  
USPTO

x A Barley  
Central District → Angela

did Sum. Judgement Denial TT

571-272-8500

Must: w/in 35 Days

(Extra 5 b/c by mail)

400 Chapt TBMP

Ref  
GUIDE

- Serve to other side

6/9/08

Discoverable 1/4

Format: Subsection w/in 400

- Provide to extent discover

- Don't forfeit to Object on Merits  
File timely

- Request for

6/6/08 - Serve to other side - mail  
cert of mail.

x Andrew Barley

⊖ No TBMP § 110 Mail Procedure

pg 57

06/14

⊖ only serve to other side; not USPTO

Requests for Admission to Apply.

6/5/08 USPTO  
SuperH

1) Prod. of Docs to Apply

(35)

3) Opponent 1<sup>st</sup> Set of Interrogatories to Apply.

[Q15] 4) Mail sent 6/6/08 & Submitted TEAS  
OK for timeline?

✓ 2) Date of Docs created  $\approx$  Apply date?

③ Privilege Basis Fed. R. Civ. P. 26(b)(5)  
Express claim, nature of Docs,

④ # of requests herein to which the Doc  
is responsive

5) Object on Merits

---

Objections 410 pg 57.

Cooperate pg 54-56

Fed

---

6/9/08 I M'd Back my Answers

Testimony Period  $\rightarrow$  700 chapters

Notices: Depo, Reliance, Witness,

They have burden of Proof

7/5/08 - They will start

Print my Responses

CB Jonathan  
Reichman

7/10/08

Super H  
Legal  
Dispute  
Notes  
Log

- Will do a lease back to me.

& Compensate me for my efforts

8/14/08

7/3 Started

7/7/08

Suspended

for @ 40 days

→ SBCglobal.net

10/2/08 Only - respond -

Officers - They will  
Serve notice on me.

Supplemental  
Responses

**FIGURE 2.**

SuperH.  
TM

2/24/06 USPTO Application

Submitted  $\rightarrow$  7 months

Due  
9/24/06

To Do:

- 1) Find research options
- 2) Look for marketing options
- 3) Consider time-line

- Best Plan

- Prod. } outsource?

- Samples

1/31/07 CALL ANDREW SAXLEY  
FOR HELP 571-272-4253

Atty John Reisman - (212) 908-6256\*  
(212) 425-7200

Called me @ letter

Superhero

Legal

Atty

LOG  
NOTES

2/2/07 J.R. Called wants extension

- Courtesy - (Counter Proposal)  
↓  
(#)

### Settlement Notice

- 1) Intent on Marketing Product - Done.
- 2) Presently have national distrib of other family product.
- 3) Know distrib channels & Bus =>  
↑ \$\$\$
- 4) Superhero has merit claim in this case
- 5) Marvel's interest unknown to me but:

Terms ~ Substantial ~ SFC ~ Distrib



Enscreen  
Affny

2/5/07

1-676 800 22 Ref# USPTO

1st Extension done 2/7/07

~ 120 days possible

1st 30

2nd 60 > 90 days

initial => 3rd 30 - 30

120 day limit

must => 180 Max Extension  
"Notice of Opposition"

"TTAB" - chap 200 - Ext  
chap 300 = opposi

Consent

- Already Reviewed by Affny:
- Published already -> Registration

DC is holding up extension

2/6/07 M. left w/ John @ extension 30 days avail.

2/6/07. J.R. to email contact form

3/3/07 Returned JR's call

- ① license the Super Hero TM.  
John to get licensing terms.

3/15/07 ① Grant License on a Royalty Basis.

- ① 100% profits are mine - Marvel own Name

(No)

- ② ASK JR @ \$ to buy-out right (or)

\$ to Buy & then I license back name

3/19 - JR calls back - I tell him I to CB.  
L They want to buy TM outright.

11/27/07 xTheresa | Super Hero

USPTO

Trademark TRIAL Appeal (571) 272-8500

800-786-9199

5/11/07 M. left (Serial 78823155) (571) 272-8500  
USPTO CB → new M.

S Hero

Opposition Due - 5/23/07

\*

211 W H  
Address is  
of record

- Admit  
- "Accept or Deny assertions"

- Send electronic Response

→ TM → left side → on-line filing  
'ESTTA'

- need answer in opposition

on-web -

Back 5/9/07

Notes  
Answer  
over

Andrew Baxley Esq  
571-272-4253

5/18/07 Answer Filed

7/24/07 Atty

Gaynor Barbara Anne → Barb

tel (571) 272-9164 (Office 115)

(M. left) x29164 mail

Change - PO Box

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7/25/07 - Barb says answer received

interlocutory x Andrew Baxley

Trademark  
Trial Appeal  
Board

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- Secondary Market Services, LLC
- SLM Financial Corporation
- SLM Financial Corp. - WV
- Sallie Mae Education Trust
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Address: 211 WH

USPTO

Electronic Forms  
of corresp. Address  
Form

(7/25/07)

PO Box

→ Δ of

Andrew Baxley  
Esp.

(571)

272-~~7764~~

4253

"Opposition Proceeding"

5/11/07 - Andrew Baxby Esq. | Due 5/23/07 (USPTO Shows)

- Must file an answer

- Trademark Manual

- TMS → TTAB → [Manual] [USPTO Board] [Proced.] [Format]

TTAB = [Section 309] → Contents of answer.

(A) "Admit or Deny" - address each #

(B) No arguments needed.

① Pleading Stage. - Now

② Discovery

③ No advice

Commercial Use

④ File on-line - US 3 - No form

Notes

Q's

[Format/Reg's] - Name of my (Answer to noticed oppos?)

[Q's] Notice P.S. by #s? & Reference = "Deny"

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① Registration # "\_\_\_\_\_ for "petition to cancel"

7/25/07 M. w/ A Barley Esq @ States:

USPTO  
Shere

AB says discovery period  
ends 10/30/07

A filed  
5/18/07

- Mark "Suspended" 11/1/07

- 5/18/07 - (OCT 25/07) 0

- Trademark trial & Appeal Bd. 8-5 AM EST

Notice & trial date

(571) 272-8500  
TEC

(Same Attorney)

11/2/07 - Duwayne Switchboard

1) Email Correspondence

2) Mail Address

opposition # only

91176744

(Proceeding #)

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11/2/07 Paralegal - Clara Vela (571) 272-4316 CB @ 11/9/07

(from Home)

→ M. left w/ Clara 11:30 PST

259

- Andrew Barley 571-272-4253 M. 11:41 PM

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OCT 25 → 35 days

11/2/07

Tell opposition

Address to 2000 Broadw

→ T-TAB View - #8 submemu

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Super #

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12/19/07 - oral Argument Denied

x A Baxley  
Central District → Angela  
did Sum. Judgement Denial  
5/14/08  
Superior  
USPTO  
571-272-8500  
TT

Must: w/in 35 Days (Extra 5 b/c by mail)

#400 Chapt TBMP

Ref  
GUIDE

- Serve to other side

6/9/08

Discoverable 1/4

Format: Subsection w/in 400

- Provide to extent discover

- Don't forget to Object on Merits  
File timely

- Request for

6/6/08 - Serve to other side - mail  
only Cert of mail.

x Andrew Baxley

⊖ No TBMP § 110 Mail Procedure

pg 57

06/14

⊖ only serve to other side; not USPTO

Requests for Admission to Apply.

16/5/08 (USPTO SuperH)

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(35)

3) Opponent 1st Set of Interrogatories to Apply.

(Q15) 4) Mail sent 6/6/08 & Submitted TEAS  
OK for timeline?

✓ 2) Date of Docs created  $\approx$  Apply. date?

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Express claim, nature of Docs,

④ # of requests herein to which the Doc  
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5) Object on Merits

---

Objections 410 pg 57.

Cooperate pg 54-56

Fed

---

6/9/08 & M'd Back my Answers

Testimony Period  $\rightarrow$  700 chapters

Notices: Depo, Reliance, Witness,

They have burden of Proof

~~7/5/08 - They will start~~

↑ Pro not my Responses



CB Jonathan  
Reichman

7/10/08

Super H  
Legal  
Dispute  
Notes  
Log

- Will do a lease back to me.

& Compensate me for my efforts

8/14/08

7/3 Started

7/7/08

Suspended

for @ 40 days

SBCglobal.net

10/2/08 Only - respond -

Officers - They will

Serve notice on me.

Supplemental  
Responses

**PROOF OF SERVICE**

I hereby certify that a true and complete copy of APPLICANT'S AMMENDED Figure 2.  
has been served by mailing said copy on October 3, 2008, via first  
class mail, to:

Kenyon & Kenyon LLP  
Jonathan D. Reichman  
One Broadway  
New York, New York 10004

  
Michael C. Silver